IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003004

First-tier Tribunal No: PA/55551/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 25th of October 2024

Before

UPPER TRIBUNAL JUDGE BULPITT

Between

B G
(ANONYMITY DIRECTION MADE)

Applicant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr B Lams – Counsel instructed by Oaks Solicitors
For the Respondent: Ms S Lecointe – Senior Home Office Presenting Officer

Heard at Field House on 8 October 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

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Shaerf (the Judge) which was promulgated on 18 March 2024. In that decision the Judge dismissed the appellant's appeal against the respondent's refusal of his protection claim.

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2. Although the appeal related to a protection claim, the Judge did not make an anonymity order. Such an order was however made by Upper Tribunal Judge Meah when he granted permission to bring this appeal. Because the appeal relates to an assertion that the appellant's life is at risk in Albania and lest anything is said or done during these proceedings that might give rise to such a risk I maintain the anonymity order that was made by Judge Meah.

Factual Background

3. The appellant is Albanian and 26 years old. He arrived in the United Kingdom on 22 December 2014 hidden in a lorry and claimed asylum as he said he feared persecution in Albania due to a blood feud which arose after his paternal grandfather was murdered in 1970. The respondent refused that asylum claim and in September 2016 First-tier Tribunal Judge Abebrese dismissed an appeal against that refusal. Despite having no leave to do so, the appellant remained in the United Kingdom and four years later, on 30 November 2020 submitted further representations in support of his asylum claim to the respondent.

4. The appellant's further representations included an assertion he had not made previously, namely that on his journey between Albania and the United Kingdom in 2014, he was abducted in France by an Albanian gang who forced him to work cultivating cannabis in a warehouse. He stated that he eventually escaped from the gang and then travelled to the United Kingdom hidden in the lorry. The appellant's claim now was that he feared persecution in Albania not only due to the blood feud, but also from the gang who had abducted him in France. The further submissions also included a report about the appellant written by Consultant Psychologist Dr Azmathulla Khan Hameed which concluded that the appellant presented with symptoms consistent with an Adjustment Disorder (Mixed Anxiety and Depressive Reaction). The respondent treated those further submissions as a fresh asylum claim.

5. While the appellant's fresh asylum claim was being considered by the respondent, the appellant was on 15 July 2021 separately referred into the National Referral Mechanism (NRM) as a potential victim of trafficking following his claim that he was abducted and forced to work in France. That referral was not pursued for reasons that are not explained but are presumed to be linked to the fact that two months later, in September 2021 the appellant clandestinely left the United Kingdom and returned to Albania where he stayed for a month before on 29 October 2021, he again circumvented border control and returned to the United Kingdom clandestinely.

6. The respondent refused the appellant's fresh asylum claim in a decision dated 22 November 2022. In that decision she relied on the guidance provided in Devaseelan *[2002] UKIAT 702 and taking the decision of Judge Abebrese as the starting point, rejected the appellant's assertion of a well founded fear of persecution in Albania on the grounds of a blood feud. The respondent did not challenge the credentials of Dr Hameed but concluded that treatment for the appellant's Adjustment Disorder was available in Albania and that the evidence did not establish that the high threshold necessary to engage the state's obligations under Article 3 of the Human Rights Convention had been established. Concluding that the appellant would not face very significant obstacles to reintegration in Albania the respondent also refused the appellant's human rights claim.

7. The appellant appealed to the First-tier Tribunal. In addition to the submissions made to the respondent, he adduced at his appeal hearing a report by Clinical

Consultant Psychologist Emma Citron stated that the appellant meets the criteria for Post Traumatic Stress Disorder (PTSD) and mixed anxiety and depressive reaction, and a report by Dr Antonia Young, an anthropologist who specialises on the Balkans and who concluded that the appellant's account gives much reason for him to fear reprisal on account of the blood feud and the gang who kidnapped him. The appellant gave evidence at his hearing during which he was treated as a vulnerable witness.

The Judge's Decision

8. The Judge dismissed the appellant's appeal, finding that the evidence did not show that the blood feud had continued after the murder in 1970, and that the appellant's claim to have been abducted and forced to work in a cannabis factory in France was not true. The Judge recognised that the appellant's displacement and move to the United Kingdom whilst a minor may have resulted in him suffering some mental health problems but concluded that, with the assistance of his family, the appellant would be able to access any medical help that he needed and that he would not face significant obstacles to reintegration in Albania.

The appeal to the Upper Tribunal

9. Permission to appeal was granted on two grounds. In the first ground the appellant argues that the Judge gave insufficient reasons for rejecting the appellant's account of being trafficked when in France. In the second ground the appellant argues that the Judge impermissibly placed limited weight on the medical evidence submitted by the appellant when that evidence was not challenged by the respondent.

Analysis and Decision

Ground One

10. I begin consideration of this ground by reminding myself of the guidance given to appellate courts by Lewison LJ in Fage UK Ltd v Chobani UK Ltd [2024] EWCA Civ 5:

> 115. It is also important to have in mind the role of a judgment given after trial. The primary function of a first instance judge is to find facts and identify the crucial legal points and to advance reasons for deciding them in a particular way. He should give his reasons in sufficient detail to show the parties and, if need be, the Court of Appeal the principles on which he has acted and the reasons that have led him to his decision. They need not be elaborate. There is no duty on a judge in giving his reasons, to deal with every argument presented by counsel in support of his case. His function is to reach conclusions and give reasons to support his view, not to spell out every matter as if summing up to a jury. Nor need he deal at any length with matters that are not disputed. It is sufficient if what he says shows the basis on which he has acted.

11. That guidance was quoted in an immigration context in Lowe v Secretary of State for the Home Department [2021] EWCA Civ 62, in which McCombe LJ added:

> 31. Equally, it is to be recalled that judgments at first instance are necessarily an incomplete impression made upon the judge by the primary evidence. This FTT judge reached the conclusion that he did on the issues raised and he expressed himself succinctly on them. This is what Lord

Hoffman said on the point in the well known passage of his speech in the House of Lords in *Biogen v Medeva plc* [1997] RPC 1 at 45:

> "The need for appellate caution in reversing the judges evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of impression as to emphasis, relative weight, minor qualification and nuance *(as Renan said, la verite est dans une nuance),* Of which time and language do not permit exact expression, but which may play an important part in the judges overall evaluation…."

12. At [47] of his decision the Judge concludes that *"the appellant has failed to show that he has a well-founded fear of persecution on return to Albania by reason of the blood feud or that he was trafficked for labour in France and he would be at real risk of being re-trafficked"* I do not accept Mr Lams' submission that this conclusion elided the separate issues of the credibility of the appellant's trafficking claim and whether he would be at real risk of being re-trafficked on return to Albania. When it is broken down it is clear from this sentence that the Judge concludes that the appellant has failed to show (i) he has a well-founded fear of persecution by reason of the blood feud, (ii) he was trafficked for labour in France, and (iii) he would be at real risk of being re-trafficked. If there were any doubt about the Judge's conclusion however that it removed when the Judge confirms again at [49] that he has rejected the appellant's claim to have been trafficked in France.

13. The reasoning for this conclusion begins at [41] of the decision, where the Judge notes that despite the appellant claiming that the trafficking occurred in 2014, it was not referred to in the appellant's 2016 appeal and additionally that the further submissions made on 30 November 2020 referred only briefly to trafficking and did not expressly rely on a claim of trafficking. The Judge also notes in this paragraph that the referral to the NRM was not pursued and that there was nothing to suggest that the appellant had sought to re-activate that referral. Mr Lams argues that this analysis of the delay to the appellant's claim of being trafficked in France, fails to recognise the appellant's explanation in his witness statement that he has struggled to inform people because he was ashamed, scared to talk and suffering memory loss. Given that the Judge explicitly states at [32] that he has *"carefully and conscientiously considered the written and oral testimony of the Appellant"* and given the Judge specifically says at [47] that he has considered the appellant's claimed problems with memory, I do not accept the suggestion that the appellant's explanation has not been considered by the Judge. The Judge also refers at [41] to an alternative explanation that the appellant advanced in his oral evidence, which was that he did not understand the significance of his experience in France until he spoke about it with a friend in 2018. Read as a whole it is apparent from the Judge's decision that he considered the delay in bringing the claim to have been trafficked and the ambivalent way it was advanced in the NRM referral and fresh asylum claim, to be a factor that undermined the credibility of the claim, notwithstanding the appellant's explanation. This was a conclusion he was entitled to reach.

14. At [46] the Judge analyses the substance of the appellant's trafficking claim. The Judge records that the appellant's evidence was that having been abducted

in Boulogne he was driven two hours in a car to a mountain, and he comments that *"Any mountains would be very far from Boulogne on the north French coast on the North European plain"*. The Judge then records an inconsistency between the appellant's witness statement in which he said that having fled his oppressors he met some helpful Albanians on the road who arranged his travel direct to the United Kingdom and the appellant's account at the hearing, which was that having fled his oppressors he met a helpful Albanian in a coffee shop who took the appellant to Boulogne and reunited him with his brother. Although Mr Lams argued that it is not apparent from this paragraph that the Judge considered these inconsistencies significant and suggested that they were not in fact noteworthy indicators of an untrue account, I am satisfied that this paragraph adequately explains the principles on which the Judge acted and the reasons which led him to the conclusion that the appellant had not told the truth about events in France.

15. Mr Lams referred to the end of [47] of the Judge's decision where the Judge accepted from the appellant's testimony that the appellant had some knowledge of cannabis gardening and argued that this, plus consistencies in the appellant's account, pointed towards the truth of the appellant's claim. These submissions however are no more than an attempt to re-argue the case. It is clear that the Judge assessed the consistency or otherwise of the appellant's account before concluding that it was not credible. It is also clear from [47] that while the Judge accepted the appellant had a knowledge of cannabis gardening, he did not accept having considered the "whole sea of evidence"[1] before him and having heard and seen the appellant giving evidence, that the appellant acquired that knowledge having been abducted and forced to work in France.

16. Finally Mr Lams argued that when assessing the credibility of the trafficking claim, the Judge was required to consider the fact the appellant was a child at the time of the events he described and that he suffers mental health problems now. Whilst this is unquestionably true there is nothing to indicate that the Judge failed to do this. In fact, the Judge explicitly states at [32] that he has taken account of the fact the appellant was a vulnerable witness, and states again at [47] that he has made allowance for the appellant's age at the time of the events being described. Further the Judge has, as the grounds acknowledge, recognised the appellant's young age when he left Albania and consequent mental health challenges at [49] of his decision.

17. Bringing this all together it is apparent that, contrary to the arguments advanced on behalf of the appellant, the Judge has given adequate reasons for concluding that the appellant's account of being abducted and forced to work in a cannabis factory in France was not true.

Ground two

18. As is indicated in the appellant's second ground of appeal, at [23] of his decision the Judge records that the Presenting Officer representing the respondent at the hearing stated in his submissions that the two medical reports submitted on behalf of the appellant were not challenged. It is argued that the Judge went behind that position when he analysed the medical reports at [39] – [42] of his decision and decided to attribute reduced weight to the reports (see [49] of the decision).

19. On careful reflection I am not satisfied that the Judge "went behind" the respondent's stated position when analysing the medical reports that had been

[1] See [114 (iv)] of Fage UK Ltd v Chobani UK Ltd

adduced by the appellant. Notwithstanding the fact they were unchallenged, the Judge was clearly concerned that neither of the reports considered the fact that in September 2021 the appellant had travelled out of the United Kingdom, through Europe to Albania and then in October 2021, back through Europe and clandestinely into the United Kingdom again. In the case of Dr Hameed's report this is unsurprising given the report was written a year before the appellant made that journey. However it was indisputably reasonable for the Judge to question the weight to be attached to Dr Hameed's conclusion that the appellant was unfit to travel to Albania in the light of the fact that the appellant had done just that without encountering any apparent difficulties. Likewise the Judge was not going behind the respondent's position when pointing out that although Ms Citron states that she has considered the appellant's witness statement in which he describes travelling to Albania in 2021, she makes no reference to that trip or its impact on her assessment other than a reference to the appellant briefly leaving the United Kingdom. Rather than challenging the reports the Judge was simply identifying their clear deficiencies.

20. The Judge also refers when deciding to attribute reduced weight to those reports, to the fact the authors of the two reports were not provided with the appellant's GP records when they were instructed to provide their reports,. Again, the limited amount of information that was provided to the authors of the reports was a legitimate factor for the Judge to take account of when deciding how much weight to attribute to the reports. This remains the case even though the respondent did not challenge the contents of the reports, such as they were.

21. Ultimately, although the respondent did not challenge the reports, the weight to be attributed to them in amongst all the other evidence before him was resolutely a matter for the Judge. The fact that their contents were unchallenged could not mean that the Judge was required to attribute a particular weight to them. The Judge was required to weigh the unchallenged contents of the reports together with all the other evidence, including the evidence that the appellant able to make the journey across Europe, stay in Albania for a month and then travel back to the United Kingdom and re-enter the country clandestinely, before reaching his decision on the risk to the appellant and his ability to reintegrate if returned to Albania. This is what the Judge did and the way the Judge conducted this evaluation and the weight he attributed to the different pieces of evidence including the medical reports, did not involve any error of law.

22. In any event, it is clear that the Judge did give some weight to the two medical reports and he recognised the appellant to be suffering from some mental health problems for which he was taking the anti-depressant Citalopram and for which he would benefit from some talking therapy. The Judge's further conclusion that the appellant would be able to access these treatments in Albania with the assistance of his family was reasoned and one which the Judge was unquestionably entitled to reach.

23. Overall, therefore I am satisfied that there was no procedural irregularity involved in the Judge's assessment of the medical evidence that was adduced and that the Judge's reasons for attributing the weight he did to those reports in his assessment of the evidence were adequate. On this basis this ground of appeal must also fail.

Conclusion

24. The grounds pleaded do not establish that the Judge's decision involved an error of law and disclose no basis for this Tribunal interfering with the decision of the Judge.

Notice of Decision

The appellant's appeal is dismissed.

The decision of the First-tier Tribunal did not involve the making of a material error of law and therefore stands.

Luke Bulpitt
Upper Tribunal Judge Bulpitt

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 October 2024