IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001837

First-tier Tribunal No: HU/59675/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 3rd of December 2024

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

AA (Albania)
(ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Ms E. Atas, Counsel instructed by Allied Law Chambers Solicitors
For the Respondent: Ms S. Cunha, Senior Home Office Presenting Officer

Heard at Field House on 27 September 2024

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Hamilton ("the judge") dated 17 October 2023 dismissing an appeal brought by the appellant, a citizen of Albania born in 1973, against a decision of the Secretary of State dated 23 November 2022 to refuse his human rights claim. The judge heard the appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act").

2. The appellant appeals against the decision of the judge with the permission of Upper Tribunal Judge Reeds.

Procedural background

3. This matter has an unusual procedural background. The appellant originally claimed asylum on the basis of a factual matrix which he has largely repeated in the course of the present human rights claim. The asylum claim was refused on 5

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May 2021 and certified as “clearly unfounded” under section 94(1) of the 2002 Act (“the Asylum Decision”). There appears to have been no challenge to that decision or its certification.

4. However, on 15 October 2020, while the asylum claim was pending, the appellant had made a human rights claim, based on the same factual matrix as the asylum claim, which at that point remained pending. The Asylum Decision did not determine the human rights claim, which remained pending until the decision of 23 November 2022 presently under appeal (“the Human Rights Decision”). In the course of her reasoning in the Human Rights Decision, the Secretary of State relied on the reasons given by the Asylum Decision.

5. The decision under challenge is therefore the refusal of a human rights claim which adopted the reasoning (and asylum-based concepts) of a decision refusing the appellant’s claim for asylum.

Factual background

6. In summary, the appellant claimed to be unable to repay a debt he owes to violent moneylenders in Albania. He fled here in 2018. The moneylenders have since threatened his wife, and, in 2019, tracked the appellant down by telephone while he was immigration detention. They threatened him over the telephone and have continued to threaten his wife. He would not enjoy protection from the authorities in Albania, and cannot relocate. The appellant now claims to live with a number of serious mental health conditions, engaging the Article 3 threshold.

7. The judge summarised the extensive credibility concerns relied upon by the Secretary of State in the course of the both decisions. The presenting officer before the First-tier Tribunal had not put many of those alleged inconsistencies to the appellant under cross-examination, so the judge ascribed minimal significance to them. He accepted that the appellant was in debt to money lenders, but concluded that he would enjoy sufficiency of protection from the Albanian authorities, and that he could relocate within the country in any event. He would not face very significant obstacles to his integration in Albania, and his health conditions were not such that his return would engage Article 3 ECHR. There were no exceptional circumstances such that it would be unduly harsh for the appellant to be removed.

Issues on appeal to the Upper Tribunal

8. The renewed grounds of appeal to the Upper Tribunal are as follows:

   a. The judge failed to apply the Joint Presidential Guidance Note No. 2 of 2010 concerning vulnerable witnesses and appellants;

   b. The hearing was procedurally unfair because the judge resolved issues against the appellant that had not been put to him under cross-examination;

   c. The judge failed properly to apply the relevant country guidance. It was not open to the judge to conclude that internal relocation would be a viable option for the appellant, in light of *AM and BM (Trafficked women) Albania CG* [2010] UKUT 80 (IAC) and *BF (Tirana - gay men) Albania* [2019] UKUT 93 (IAC). The judge also did not apply the authorities concerning internal relocation.

   d. The judge’s assessment of the appellant’s mental health conditions failed to apply the “very significant obstacles” test, or otherwise consider the

references in the appellant's skeleton argument to the experience of those living with mental health conditions in Albania.

9. The Secretary of State relied on a rule 24 notice dated 21 August 2024. The notice resisted the appeal and sought to challenge, by way of a cross appeal, some of the judge's findings of fact that favoured the appellant.

Preliminary issues

10. At the hearing before the Upper Tribunal, there was initially common ground between the appellant and the Secretary of State that the judge had erred, and that the matter should be remitted to the First-tier Tribunal. When I probed these apparent concessions in further depth, it transpired that the parties had not, in fact, agreed on any such thing.

11. Ms Cunha's position was that it had been procedurally unfair towards the Secretary of State for the judge to have analysed the issues in the appeal through the lens of refugee law. The appeal was against the refusal of human rights claim, not the refusal of a protection claim. The appellant's protection claim had been refused by the Secretary of State and certified as "clearly unfounded", meaning that it was inappropriate for the judge to address issues such as internal relocation and sufficiency of protection.

12. For the appellant, Ms Atas' position was that the judge had fallen into error for the reasons given by the grounds of appeal, rather than for the reasons for which Ms Cunha contended.

13. When the disparity between the parties' positions became clear, Ms Cunha withdrew her "concession". The appeal proceeded by reference to the grounds of appeal.

14. In any event, no possible procedural unfairness of the sort alleged by Ms Cunha arose here. It was open to the judge to address the presence of a real risk of serious harm within the Article 3 paradigm by reference to whether the appellant would enjoy a sufficiency of protection or the ability internally to relocate within Albania. Moreover, the Human Rights Decision expressly incorporated reasoning from the Asylum Decision on these issues, thereby rendering those issues "live" within these proceedings.

Ground 1: the judge applied the Joint Presidential Guidance Note No. 2 of 2010

15. There is no merit to the first ground of appeal. The judge was plainly aware of the appellant's ill health, having referred to it not only as part of the narrative of his protection claim (in particular, the impact that being contacted by the moneylenders while in immigration detention was said to have had on his mental health), but also addressed it in the context of the conduct of the hearing, and the assessment of the appellant's evidence. The judge expressly addressed the impact of the Joint Presidential Guidance Note No. 2 of 2010 at para. 33 of his analysis, having previously noted (para. 28) the impact that poor memory is capable of having on an individual's account. The judge expressly said that he took these factors into account when assessing the appellant's evidence. The judge was sitting as an expert judge of a specialist tribunal. There is no basis to conclude that the judge did anything other than follow his own self-direction. Indeed, the judge expressly declined to take a number of apparent inconsistencies in the appellant's account into account against him: see paras 36 to 43.

Ground 2: a fair hearing before the First-tier Tribunal

16. It is well-established that a failure to canvass points not aired between the parties may be procedurally unfair. Properly understood, however, that is not what the judge did in the passages highlighted in the grounds of appeal.

17. As noted above, the judge had previously declined to take adverse points against the appellant that were not put to him under cross-examination: see paras 36 to 43. In the passages that follow, the references to a point not being put to the appellant in cross-examination continue the theme of the judge not reaching negative credibility findings in relation to a point not put to the appellant.

18. The first complaint is with para. 46:

> "The appellant did not produce any independent or other reliable evidence to contradict the respondent's evidence. The appellant did not mention any issues relating to the police in his first statement. The psychiatric report does not record the appellant having said anything about concerns regarding the police. In his second statement the appellant says that the police in Albania had visited his wife but she denied having any problems because she did not want to get into trouble**. The appellant was not asked why the police visited his wife his if no one had made a complaint to them.** If the police visited his wife because they had received information that she was having problems with the money lenders, this strongly suggests that they are motivated and interested in protecting the appellant's family and identifying and prosecuting anyone who is threatening them. In his oral evidence, the appellant said that he had not gone to the police because he was frightened for the safety of his family." (Emphasis added)

19. The grounds contend that, since the appellant was not asked why the police had visited his wife if no one had reported the moneylenders' threats, it was unfair for the judge to resolve credibility concerns against the appellant on that basis.

20. There is no merit to this criticism. In the extract cited above, the judge did not resolve any points against the appellant on that basis. The judge's analysis was premised on the alternative scenario whereby if the police had visited his wife because a complaint *had* been made, that suggested that they took the issue seriously. The judge here simply noted a point of detail that had not been explored with the appellant, and moved on to address the alternative scenario, without addressing issues that had not been put to the appellant.

21. Next, the grounds criticise para. 47 ("There was no evidence that the moneylenders had any influence over the police or that they were part of a large and/or influential criminal gang."). It is not clear how this sentence was procedurally unfair. There was no evidence of that sort. That was plainly an issue in dispute between the parties. In the absence of such evidence, it was rationally and fairly open to the judge to make this observation as part of finding that the appellant had not established that he would be at a real risk of Article 3 mistreatment or more likely than not to experience very significant obstacles to his integration. It was for the appellant to establish his case in this respect.

22. The grounds criticise para. 48 in which the judge rejected the appellant's account of being unable to rely on the prospective support from his family in Albania upon his return. The judge was concerned that the appellant's position

was inconsistent with his broader case that his sister had funded his crossing to the United Kingdom, taken with the background materials which suggested that family relationships are extremely important and strong in Albania. In turn, that strongly suggested that the appellant would have the support of his extended family in Albania. Again, it is not clear how this is unfair. This was plainly an issue that was in dispute between the parties. It had been raised in the Human Rights Decision and expressly maintained at para. 10 of the Respondent's Review. It was for the appellant to demonstrate that he would face "very significant obstacles" in Albania, and this part of the judge's analysis amounts to no more than a rejection of this aspect of the appellant's case. This issue was ventilated between the parties. It was not unfair for the judge to rely on it.

23. The final criticism under this heading arises from para. 51, in which the judge observed that the moneylenders had put only limited efforts into sourcing the appellant. This reasoning was not unfair. This point had been raised with the appellant in the refusal letter; the Human Rights Decision concluded that the appellant had failed to provide evidence to support his claims of mistreatment, and had not provided evidence of the threats to his family. Paras 12 to 14 of the Respondent's Review highlighted the absence of evidence supporting the appellant's claim. This was a point that the appellant of which the appellant was on full notice. It was not unfair for the judge to reason his analysis of this issue in the way that he did.

Ground 3: findings on internal relocation open to the judge

24. This ground is a disagreement of fact and weight.

25. First, in light of the judge's findings concerning sufficiency of protection in the appellant's home area, this issue does not arise.

26. Secondly and in any event, the judge was entitled to conclude that the appellant would be able to relocate internally within Albania for the reasons he gave. While there will be difficulties in seeking to internally relocate in some cases, such as in the case of trafficked women and gay men, it does not follow that internal relocation will never be possible in all Albanian cases. In these proceedings, the judge was entitled to conclude that, in light of the minimal efforts made by the criminal gang to track the appellant down, they would be unlikely to make such efforts in Albania upon his return. It is nothing to the point that the appellant claimed to have been contacted in 2019; the judge was conducting a contemporary assessment, in 2023. As set out in my analysis of the previous ground of appeal, there was no evidence that the moneylenders had the reach and influence claimed by the appellant. That was a conclusion the judge was entitled to reach.

27. Nothing turns on the judge not referring expressly to the relevant authorities concerning internal relocation. I note that neither the appellant's skeleton argument before the First-tier Tribunal nor grounds expressly referred to the specific authorities either. Nothing turns on this. The established concepts in refugee law about whether internal relocation would be reasonable or unduly harsh (for example, *Januzi v. Secretary of State for the Home Department & Ors* [2006] UKHL 5) are specific to the asylum context, and are only engaged where an individual has established a well-founded fear of being persecuted on a Convention ground. On the judge's findings, this appellant has not established that he is at real risk of a commensurate threat from non-state agents. The question of the appellant benefitting from the "unduly harsh" or "reasonable" tests simply does not arise. The judge rightly analysed the case through the

Article 8 paradigm, by reference to the established Article 8 concepts, such as whether the appellant would face “very significant obstacles”, an issue to which I now turn.

Ground 4: assessment of very significant obstacles addressed the appellant’s mental health

28. This ground is without merit. The judge addressed the impact of the appellant’s mental health conditions upon his ability to reintegrate upon his return in detail from paras 53 to 73. The analysis addressed the impact of the appellant’s anxiety. In particular, para. 58 expressly addressed the appellant’s mental health conditions on his ability to engage in day to day practical tasks. Taken with the judge’s analysis at para. 59 concerning the impact of the appellant’s current immigration status and subjective fear on his anxiety, and the supportive presence of his family, the judge addressed all relevant factors. Having done so, the judge expressly addressed the concept of “very significant obstacles” by reference to the appropriate authorities (para. 61), reaching a conclusion that was open to him.

29. The judge referred to the new materials highlighted in the grounds of appeal to the First-tier Tribunal at para. 16(4) of his decision and was plainly aware of them. As the Secretary of State noted at para. 8 of the Respondent’s Review, there was no evidence that the appellant was pursuing any other treatment other than medication, meaning that the claimed limited availability of mental health treatment facilities in Albania would not place the appellant in a significantly different position to his present circumstances. Against that background, the judge found, at para. 53, that there was only very limited evidence concerning the appellant’s claimed mental health conditions, and the report of Dr Sachdeva-Mohan attracted limited weight for the unchallenged reasons given by the judge.

30. The criticism of the judge’s analysis of the appellant’s claimed mental health conditions, and their impact on his re-integration in Albania, is without merit.

Rule 24 notice

31. It is not necessary expressly to consider the Secretary of State’s criticisms of the judge’s decision in any depth, in light of my analysis, above.

Anonymity

32. The First-tier Tribunal made an order for the appellant’s anonymity. I maintain that order to prevent the publication of this decision exposing the appellant to a risk he does not currently face upon his return to Albania. The First-tier Tribunal anonymised the appellant’s initials to “A”. It is generally helpful for an anonymised appellant’s name to have at least two letters. I therefore amend the anonymity order to refer to the appellant as “AA (Albania)”.

Conclusion

33. This appeal is dismissed.

<u>Notice of Decision</u>

The appeal is dismissed.

The decision of the First-tier Tribunal did not involve the making of an error of law such that it must be set aside.

Stephen H Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 November 2024