



Upper Tier Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/07838/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 23<sup>rd</sup> March 2016

Decision & Reasons Promulgated  
On 12<sup>th</sup> April 2016

Before

Deputy Upper Tribunal Judge Pickup

Between

Secretary of State for the Home Department

Appellant

and

SM

[Anonymity direction made]

Claimant

**Representation:**

For the claimant: Ms G Brown, instructed by Croydon & Sutton Law Centre  
For the appellant: Ms A Brocklesby-Weller, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the Secretary of State's appeal against the decision of First-tier Tribunal Judge Colvin promulgated 17.12.15, allowing on asylum and human rights grounds the claimant's appeal against the decision of the Secretary of State, dated 15.9.14, to refuse his asylum, humanitarian protection and human rights claims, and to remove him from the UK. The Judge heard the appeal on 17.2.15.

2. Upper Tribunal Judge Martin sitting in the First-tier Tribunal granted permission to appeal on 5.2.16.
3. Thus the matter came before me on 23.3.16 as an appeal in the Upper Tribunal.

### **Error of Law**

4. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the decision of Judge Colvin should be set aside.
5. The core of the claimant's asylum claim can be summarised briefly as follows. His date of birth is [ ] 1998 and at the date of the First-tier Tribunal hearing he was 17 years of age. His father is an alcoholic and gambler. On his way to school on 1.5.14 two men approached the claimant. One grabbed his shoulder whilst the other warned him to tell his father that time was running out. He reported this to his parents, but his father did not say anything. A few days before this he had overheard his parents discussing that his father had been warned that the people to whom he owed money would kidnap the claimant. Three days later his mother told him he was going on a journey to England to save his life and the following day two men took him away, with the result that he eventually arrived in the UK on 28.5.14. He and his parents went to Greece in January 2014, which he believes was to avoid the problems his father faced in Albania, but they did not have any work or place to place and thus returned after a week. He believes that if returned to Albania his life will be in danger from his father's creditors. He has two married sisters in Albania.
6. Judge Colvin found that, based on a concession by the Secretary of State, the claimant is part of a particular social group (PSG) as an unaccompanied minor returning to Albania. The judge accepted his evidence as consistent and sufficiently reasoned to give his factual account the benefit of the doubt. Although the Secretary of State did not accept that a threat of kidnap constitutes conduct of sufficient severity to amount to persecution, the judge disagreed, relying to objective evidence in relation to blood feuds and revenge killings. The judge also found that the Secretary of State had failed to discharge the burden on her to show there is sufficiency of protection to the Horvath standard available to the claimant in Albania. The judge thus found that the claimant has a well-founded fear of persecution from non-state actors and there is an insufficiency of protection against those actors, and that relocation is not a viable option. For the same reasons, the judge also allowed the appeal on article 3 ECHR grounds.
7. The grounds of application for permission to appeal complain the judge failed to adequately reason why the possibility of kidnapping as described by the claimant amounts to persecution within the meaning of the Convention. There is no explanation why the reference to revenge killings and blood feuds supports the contention that the threat of kidnapping amounts to persecution. The judge in error placed the burden on the issue of sufficiency of protection on the Secretary of State and thus failed to properly engage with and resolve that issue. Horvath makes clear

that the onus is on the claimant to demonstrate that the authorities in the proposed country of removal are unable or unwilling, owing to systemic failures, to afford protection to its nationals: "... In order to satisfy the fear test in a non-state agent case, the applicant for refugee status must show that the persecution which he fears consists of acts of violence or ill-treatment against which the state is unable or unwilling to provide protection." Whilst objective evidence suggests some corruption and failings on the part of the Albanian authorities, the judge failed to make findings of fact based on the conflict of opinion as to the availability and efficacy of state protection, the judge thereby erring in law.

8. In granting permission to appeal Judge Martin found it arguable that the judge's finding that the threat of kidnap amounts to persecution is inadequately reasoned and it is not clear how it related to blood feuds and revenge killing. Judge Martin stated, "I am not satisfied that the Judge reversed the burden of proof with regard to sufficiency of protection, although if an error of law is found with regard to the claimed persecution then sufficiency of protection will need to be looked at again. I note that there appears to be some confusion as to whether the Secretary of State accepts the (claimant) as credible. If an error of law is found she must make a decision on that point."
9. Article 9 of the Qualification Direction defines acts of persecution. They must be sufficiently serious by their nature or repetition as to constitute a severe violation of a basic human right. The claimant relies on what was no more than a warning that made no reference to debt or consequences if not paid. Nothing said to him by his parents confirmed a debt outstanding or that he would be kidnapped, only what he overheard. The claimant has assumed that his being sent to England by his mother related to the debts owed. The Secretary of State did not accept that this account, even taken at its highest, constituted persecution, as it was based primarily on speculation and subjective fear, rather than objectively well-founded fear. Further, the claimant has to demonstrate a reasonable degree of likelihood of such fear being realised on return.
10. At §25 the judge considered the Secretary of State's contention that the claimed fear did not reach the level of severity as to constitute persecution and that his fear is subjectively based on speculation. The judge cited objective evidence in relation to blood feuds and revenge killings involving criminal gangs. Without further, at §26 the judge took the view that the threat of being kidnapped as a minor by a criminal gang for the deeds of his father amounts in principle to a threat of conduct of such severity as to be considered persecution. "When this is put in the context of the background information of revenge killings in Albania by non-state actors I am satisfied that the claimant's fear of such a threat is objectively well-founded."
11. There was no other rationalisation or explanation for the judge's acceptance that the factual claim amounted to a well-founded fear of persecution. The factual claim, speculative and subjective as it was, bears no similarities with a blood feud or revenge killings. There had been no actual threat of kidnapping, only a warning that time was running out for the father. It is difficult to understand how the judge

reached the conclusion that this was the equivalent of persecutory behaviour, or how it links to blood feuds or revenge killings. The reasoning amounts to no more than the judge's satisfaction that it was so. More was required to justify such a conclusion. In the circumstances, the decision is in error for want of adequate reasoning.

12. In the circumstances, it is not necessary to address the further grounds of appeal. The decision cannot stand and must be set aside to be remade afresh.
13. When a decision of the First-tier Tribunal has been set aside, section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions, or it must be remade by the Upper Tribunal. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. Where the conclusions on a crucial issue at the heart of an appeal are unreasoned, as they are in this case, effectively there has not been a valid determination of those issues. The errors of the First-tier Tribunal Judge vitiates all other findings of fact and the conclusions from those facts so that there has not been a valid determination of the issues in the appeal.
14. In all the circumstances, I relist this appeal in the First-tier Tribunal on the basis that this is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2. The effect of the error has been to deprive the parties of a fair hearing and that the nature or extent of any judicial fact finding which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2 to deal with cases fairly and justly, including with the avoidance of delay, I find that it is appropriate to remit this appeal to the First-tier Tribunal to determine the appeal afresh.

**Conclusions:**

15. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I remit the making of the decision in the appeal to the First-tier Tribunal.



**Signed**  
**Deputy Upper Tribunal Judge Pickup**

**Dated**

### **Consequential Directions**

16. The decision in the appeal is remitted to be made afresh with no findings of fact preserved to the First-tier Tribunal sitting at Taylor House;
17. The appeal may be heard before any First-tier Tribunal Judge except Judge Colvin and Judge Martin;
18. The estimate length of hearing is 3 hours;
19. An interpreter in Albanian will be required;
20. Not later than 10 working days before the relisted appeal hearing the claimant must serve on the Secretary of State and lodge 2 copies with the Tribunal a single, revised, consolidated, paginated and indexed bundle comprising all objective and subjective material relied on, together with any skeleton argument, copies of any case law, or guidance to be referred to. The Tribunal will not accept materials submitted on the day of the hearing.

### **Anonymity**

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did make an order.

Given the circumstances, I continue the anonymity order.

**Fee Award**                      **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable in this case and thus there can be no fee award.



**Signed**  
**Deputy Upper Tribunal Judge Pickup**

**Dated**