



IAC-AH-KRL-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/10186/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1<sup>st</sup> April 2016**

**Determination Promulgated  
On 4<sup>th</sup> May 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**E B  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms T Tabber (Counsel)  
For the Respondent: Mr S Walker (HOPO)

**DETERMINATION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Iqbal, promulgated on 20<sup>th</sup> January 2016, following a hearing at Hatton Cross on 9<sup>th</sup> November 2015. In the determination, the judge dismissed the appeal of the

Appellant under the Refugee Convention and under Article 8 of the ECHR, but allowed it under paragraph 276ADE of the Immigration Rules, whereupon the Appellant appealed the refusal decisions, and the matter has now come before me.

### **The Appellant**

2. The Appellant is a citizen of Albania born on [ ] 1998. He appealed against the decision of the Respondent dated 19<sup>th</sup> June 2015.

### **The Appellant's Claim**

3. The Appellant's claim is that his father physically beat him, as well as treated him like a slave, and that there is no protection in Albania from the police Authorities with respect to what happens within families, such that he was unable to avail himself of any state protection.

### **The Judge's Findings**

4. The judge observed that the refusal letter accepted that the Appellant provided sufficient information about his nationality and identity, but it was not accepted that his father used to beat him or use him as a slave. There were also inconsistencies in the Appellant's evidence and much of it was vague on a variety of different issues. The background information was demonstrative of the fact that there was an internal security forces present in Albania although they were susceptible to corruption and there was inefficiency and incompetence on the part of individual members of the police. However, the Appellant had not sought protection from the police, there was support available for victims of domestic violence in Albania and a system of willingness to operate it (see paragraph 27).
5. The judge found the Appellant to be credible and consistent to the lower standard of proof (paragraph 31) and the judge went on to say that the Appellant's subjective account had been corroborated by the best interest consideration report dated 8<sup>th</sup> December 2014 by Frankie West of the Royal Borough of Kensington and London Barnet and London Borough of Richmond (paragraph 32). The judge went on to consider the Appellant's reasons for not approaching the police Authorities, these being that his father was a previous army officer who had contacts with local police officers, but the judge went on to say that, "there was nothing to stop the Appellant from approaching outside of his local area any Authorities in order to gain protection from his father" (paragraph 37).
6. The judge then went on to consider the expert report of Dr Antonia Young, dated 1<sup>st</sup> October 2015, where she stated that,

"If credible on the basis of his past experiences, I consider he would face a real risk of serious harm in his home area ... it would be practically impossible for him to obtain effective protection for himself. Realistically, police protection would be virtually impossible to access due to both extensive police corruption

and a lack of involvement with family matters. Clearly they have been unable to effectively protect him thus far ...” (see paragraph 39 of the determination).

7. The judge went on to hold that this could not be correct quite simply because the Appellant, by his own admission, had not approached the police Authorities, and so it could not be said that the failure of the police hitherto to provide him with protection was indicative of their unwillingness or inability to do so (see paragraph 40).
8. The judge also went on to refer to the case of **MF [2014] EWCA Civ 902** where the court had held that on that occasion Dr Young’s evidence was “unjustifiably subjectively biased in favour of the Appellant” (see paragraph 41 of the determination). I have to say straightaway that this is an unnecessary and, in the circumstances, prejudicial observation, because the fact that Dr Young’s report had on that occasion been found to be unduly favourable to the Appellant, does not mean that Dr Young’s evidence cannot be relied upon in other cases. This does not follow at all. Indeed, the case of **SI (expert evidence - Kurd) Iraq CG [2008] UKAIT 00094** makes it clear that, “in general the Tribunal take the view that a country expert’s opinion is to be given significant weight and if the Tribunal decides to come to a different view from an expert on key matters, proper reasons must be given.
9. The judge then went on to say that the fact that there would be insufficient protection in northern Albania on account of blood feuds because of the prominence of “Kanun”, it did not follow that the same would apply to cases of domestic violence (see paragraph 42). The judge went on to say that in this case the Appellant should have been in a position to “have some form of protection outside of the local police force” and that, “it is on this basis that I find that the Appellant does not have a well-founded fear of persecution ...” (paragraph 43).
10. The judge went on to allow the appeal under paragraph 276ADE because the Appellant was “still a child who would not have the support of his immediate family on return to Albania” and as such would find it difficult to integrate back into Albanian society as an unaccompanied minor (see paragraphs 45 to 46).

### **Grounds of Application**

11. In the grounds of application the Appellant states that the judge failed to consider whether the option of internal relocation was ever reasonably open to the Appellant, in circumstances where he had concluded that the Appellant could find protection elsewhere in Albania. It was also arguable that the judge erred by failing to give adequate reasons for rejecting the expert evidence of Dr Young that the Albanian state did not provide a sufficiency of protection in cases of domestic violence just as it failed to do so where there was a blood feud.
12. On 12<sup>th</sup> February 2016, permission to appeal was granted.
13. On 1<sup>st</sup> March 2016, a Rule 24 response was entered by the Respondent Secretary of State to the effect that the judge at paragraphs 36 to 37 found that the Appellant did

not approach the police in the local area and that, this was not the same as saying that there was no protection available in the local area. The judge considered that it was possible for the Appellant to approach the Authorities outside the local area which he had not done. The reasons given by the judge at paragraph 38 where he was referring to the refusal letter showed that there was protection available for victims of violence and the Albanian Authorities were willing to operate the protection system.

### **Submissions**

14. At the hearing before me on 1<sup>st</sup> April 2016, Ms Tabber, appearing on behalf of the Appellant as Counsel, made the following two submissions. First, that the Appellant's case was that he feared persecutory mistreatment or serious harm from his father on return to his home area. His case was that he did not believe that the local police would offer him sufficiency of protection. This is because it would be considered an internal family matter but also because his father was a former soldier and many of his former comrades have become police officers in the area. The judge found the Appellant to be a credible witness and this finding included the Appellant's reason for not seeking protection of the Authorities (see paragraph 7). However, the judge then went on to hold (see paragraph 37) that the Appellant could have approached the Authorities outside his local area to gain protection from his father. However, this implicitly recognised that the Appellant had no sufficiency of protection in his own local area. If the judge had found this to be the fact then, in assessing whether the Appellant could live elsewhere safely in Albania, it was incumbent upon the judge to consider both whether relocation would be safe, and also whether relocation would be reasonable. The judge considered the question of safety outside the Appellant's local area, but the decision of the judge was silent as to whether it would be reasonable to expect the Appellant to internally relocate to avail himself of such protection.
15. Second, the judge found that sufficiency of protection exists for the Appellant on the basis of evidence cited in the reasons for refusal letter (which included reports from the Refugee Board of Canada and the US State Department) but the evidence relied upon is not particularised in any way (see paragraph 38). This was a serious failing given that the Appellant had submitted a substantial quantity of objective evidence to support his appeal on the question of sufficiency of protection. In this regard the judge also gave insufficient reasons for rejecting the evidence of the country expert, Dr Antonia Young. It was wrong for the judge to criticise the country expert on the grounds that the country expert had expressed an opinion as to risk based on a particular factual situation.
16. Dr Young had expressed an opinion based on the Appellant's account, and she had said that if the Appellant was found to be credible he would face a serious risk in his local area, and it was entirely permissible for the expert to offer this kind of an opinion. Yet the expert could not be criticised for so doing. Moreover, the judge could not reasonably have levied criticism against Dr Young on the basis of what was said about this expert in the case of **MF (Albania) [2014] EWCA Civ.** In that case, the

Court of Appeal considered the Upper Tribunal's criticism of Dr Young to have been "couched in rather harsh terms" (at paragraph 18) and the Court of Appeal proceeded to give its own opinion of Dr Young, observing that, "she is indeed a person with considerable experience of Albania and the incidents of blood feuds in that country.

17. Her evidence therefore deserved to be given considerable weight insofar as it was based on her experience" but the expert had on this occasion allowed herself to be drawn into expressing views on the very issues which the Tribunal had itself to determine. Ms Tabber submitted that this is a far cry from saying that the expert is discredited as an expert. She is not. The only reason her report was found to lack objectivity in **MF (Albania)** was because she had expressed her own views on the Appellant's case, and that is not an error that is not unusual to find where experts are knowledgeable on the issues before them.
18. Finally, Ms Tabber submitted that it was clear from the country guidance case of **EH (blood feuds) Albania CG [2012] UKUT 00348** that the Albanian state does not provide a sufficiency of protection against acts of serious harm perpetrated by non-state actors in all cases.
19. For his part, Mr Walker referred to the Rule 24 response in this case and emphasised that the judge had (at paragraphs 36 to 37) found that the Appellant had not approached the police in the local area and this meant that it could not be shown that there was no protection available in the local area. It was also possible for the Appellant to seek protection in other areas. Moreover victims of violence could get protection. With respect to the expert herself the judge was correct to say that she had engaged in speculation.
20. In reply, Ms Tabber submitted that the basic problem here was that there was a complete failure to consider the essential relevant consideration, namely, as to whether there was the availability of internal relocation to the Appellant. It could not be said that it was safe and reasonable for him to find internal relocation elsewhere. The judge had simply not considered the issue of reasonability. The judge had said that it would not be possible for the Appellant to approach anyone in his own area of locality, so if he was to consider whether he could approach somebody else in another area, it was incumbent upon him to find whether this was reasonable for him to do.

### **Error of Law**

21. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.
22. First, this is a case where the judge has failed to consider whether internal relocation is reasonably available to the Appellant. The judge has accepted that the Appellant did not seek protection in his own local area. He has then gone on to say, on at least two occasions, that this did not prevent him from seeking relocation elsewhere. If

that was the case, then it was incumbent upon him to consider whether a safe place existed internally elsewhere, and whether it was reasonable for him to seek out that safe place. Whereas the judge addressed the former he did not address the latter. Yet, evidence exists within the determination that the latter may not have been possible because the judge observed that, “the Appellant is still a child who would not have the support of his immediate family on return to Albania, given I accept that he has been a victim of domestic violence and has fled the family home” (paragraph 45). The judge also observed that, “the Appellant has been granted leave as an unaccompanied minor, and this is on the basis that there are no adequate reception facilities for a return of a minor” (paragraph 46). Yet, despite these findings in the context of paragraph 276ADE, there is no analysis of the reasonability of internal relocation being sought.

23. Second, as far as criticism of Dr Antonia Young is concerned I can say straightaway that no such criticism could have been justified on the basis of a reference to **MF [2014] EWCA Civ 902** for two reasons. First, that was a different case, which was not the same case as the case before the judge on the instant occasion. Second, even in that case, the Court of Appeal had plainly recognised that Dr Young was “indeed a person with considerable experience of Albania and the incidents of blood feuds in that country” and that the criticism of the Tribunal below of her had been “in rather harsh terms”.
24. Third, however, insofar as the instant case itself was concerned, whereas it is true that the expert in this case had stated that, “clearly they had been unable to effectively protect him [i.e. the Appellant] thus far”, thereby implying that he had sought protection, whereas he had not, this cannot be said to be the essence of Dr Young’s report. Quite apart from this, Dr Young had concluded in the body of her report in a manner that required specific attention by the Tribunal below. The conclusions in the report have nothing to do whatsoever with whether the Appellant sought protection at all. Paragraphs 31 to 33 there required consideration.
25. Fourth, there was evidence before the Tribunal, independently of Dr Young’s report (appearing at Annex A of the bundle before this Tribunal (which appears at page 12 of 22) referring to the USSD Report 2010 that included the observation that, “the Government did not fund specific programmes to combat domestic violence or assist victims, although non-profit organisations provided assistance ...”). This had to be read in the context of the earlier observation (which appears at page 10 of 22) from the United States State Department’s Human Rights Report for Albania (2010) which stated that,

“Despite improvements in law enforcement training and management, the police did not consistently respect the human rights of citizens during the performance of their duty and were not fully accountable to the rule of law. In some instances, police impunity was a problem. Police officers did not enforce the law equally an individual’s political or criminal connections often influenced enforcement of laws”.

These conclusions are not necessarily at variance with Dr Young's own report. But in any event, they required consideration by the Tribunal.

**Remaking the Decision**

26. I have remade the decision on the basis of the findings of the Immigration Judge and the evidence before her and the submissions that I have heard today. I am remitting this matter under practice statement 7.2 back to the First-tier Tribunal on the basis that the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be remade is such that, having regard to the overriding objecting in Rule 2, it is appropriate to remit the case to the First-tier Tribunal. All findings that are in favour of the Appellant will stand. The Appellant is to furnish updated objective evidence and the matter of internal relocation is to be determined appropriately.

**Notice of Decision**

27. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original Tribunal. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal under practice statement 7.2(b) to be heard at the first available opportunity with updated objective evidence and, to be heard by a judge other than Judge Iqbal.

28. An anonymity order is made.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Dated

Deputy Upper Tribunal Judge Juss

11<sup>th</sup> April 2016