Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03308/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4 May 2017	**On 11 May 2017**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

M C
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Rothwell, Counsel instructed by Parker Rhodes Hickmotts Solicitors
For the Respondent: Ms A Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Albania born in the United Kingdom on [ ] 1999. On 13 May 2016 First-tier Tribunal Judge Flynn dismissed his appeal against a decision

made by the respondent on 17 November 2015 refusing his claim for international protection. In his decision the judge noted that the respondent had accepted that:

(i) the appellant had given a credible account of his adverse experiences in Albania at the hands of an abusive father;

(ii) he had a well-founded fear of persecution from his father so long as he was a minor;

(iii) there was a Convention reason for this persecution, namely that the appellant was a member of a particular social group based on the immutable characteristic of age; and

(iv) he was not in a position to access or receive effective protection for so long as he was a minor.

The judge decided to dismiss the appeal nevertheless because "I take the view that the appellant's removal (once he is 18) would not cause the United Kingdom to e in breach of its obligations under the 1951 Convention" (paragraph 46). What appeared to have been in the mind of the judge was that the appellant had been given limited leave to remain until 8 April 2017 when he turned 17½ and that he would not be the subject of a removal decision until he turned 18 (see paragraphs 32 and 40).

2. As has been conceded by the respondent, this approach was wrong in law. The judge was obliged to decide whether the appellant was a refugee at the date of the hearing before him. That is a well-established principle of case law: see **KA (Afghanistan) and Others v SSHD [2012] EWCA Civ 1914**.

3. At the date of the hearing the appellant was still a minor (indeed he is still a minor today). The judge's error could not have been more material since if he had decided it on the basis of the facts as they stood at the date of hearing, he would have been bound (given his main finding) to find that the appellant was a refugee.

4. Accordingly the judge materially erred in law and his decision is set aside.

5. I re-make the decision by allowing the appeal. Although I have set aside the judge's decision, the respondent has raised no challenge to his key findings as set out in (i) – (iv) above. On the basis of those findings, the appellant qualifies as a refugee for as long as he is a minor. At the date of hearing before me, the appellant is still a minor. Accordingly he meets the requirements of the refugee definition as set out in the Immigration Rules and Article 2(d) of the Qualification Directive.

6. For the above reasons:

The judge materially erred in law and his decision is set aside.

The decision I re-make is to allow the appellant's appeal.

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 their 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 Date: 8 May 2017

H H Storey

Dr H H Storey
Judge of the Upper Tribunal