



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

Appeal Number: AA/00430/2016

THE IMMIGRATION ACTS

Heard at Field House

On 08 January 2018

**Decision &
Promulgated**

On 13 February 2018

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

LC

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Wilding, Senior Home Office Presenting Officer

For the Respondent: Ms G Capel, instructed by Hammersmith and Fulham
Community Law Centre

DECISION AND REASONS

- Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an Anonymity Order. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties. Failure to comply with this order could lead to contempt of court proceedings.**

2. The Secretary of State for the Home Department is the appellant, but for ease I refer to the parties as they were known in the First-tier Tribunal (the "FtT").

The appellant and proceedings

3. The appellant is a citizen of Albania born in 1988 whose appeal against the respondent's decision of 05 Feb 2015 and 01 March 2016 dismissing his international protection claim. The Ft-T (Judge C Greasley), in a decision promulgated on 18th July 2017, allowed the appellant's appeal based on his fear of his father and the general populace arising from the fact that he was gay.

The appeal to the Upper Tribunal.

4. The respondent appeals with the permission of the First-tier Tribunal (Judge Shimmin), granted on 9th October 2017.
5. There were two distinct challenges:
 - (a) At paragraph 44 the Ft-T notes that he has "treated the appellant as a vulnerable witness... and have considered the appellant's application as a child sensitive application". This amounts to material misdirection because "the judge has viewed the whole appeal as that of a child, giving the appellant additional allowances, which infects the entire of his argument. (Reproduced as written in the grounds).
 - (b) Before me Mr Wilding moved away from this formulation to argue, more attractively, that whilst it was no error to treat the appellant as a vulnerable witness on the basis of his sexuality and the finding that he previously suffered violence at the hands of his father, and the judge had reached conclusions which were open to him on the basis of the evidence before him, the judge had wrongly treated the vulnerable witness statement of the appellant as the basis for reducing the already low standard of proof so that the findings were unsustainable. In particular he pointed out that the judge states he "makes important and additional allowances when assessing the appellant's account as a whole".
 - (c) Ms Capel relied on her rule 24 response to the point that the approach revealed no error. As submitted in the skeleton argument of the FtT hearing, in KS (benefit of the doubt) [2014] UKUT 552 (IAC) the Upper Tribunal accepted at [99] that a child sensitive application of the lower standard of proof may need to be given to persons, even if now adult, if they are recounting relevant events that took place at a time when they were minors or were even younger minors.
 - (d) The appellant's account of the events which caused him to flee Albania, given in his SEF and Asylum Statement dated 9 September 2014, Screening Interview dated 21 August 2014 and Asylum Interview dated 20 November 2014, were all provided when the appellant was a child, aged 16 years old. The FtT was plainly aware

that the appellant was an adult at the time of the hearing (see, for example, [15]). The events he was recounting took place when he was an even younger minor, and the child sensitive application of the lower standard of proof was clearly founded on that position, and revealed no error.

6. I find no merit in this ground. The judge reached sustainable findings of fact on the evidence before him. The appellant's account was of the historical position i.e. to matters which concerned the appellant when he was a minor, and provided to the respondent when he was a minor. There is no basis to suggest as in the grounds that the judge mistakenly thought the appellant was still a minor as at the date of hearing and the assessment of risk on return. The gloss put on the grounds by Mr Wilding takes the matter no further. When referring to the appellant's account as a whole the judge is clearly referencing the historical position. The challenge to the phrase used by the judge is no more than a forensic nit-pick, barely more than a suggestion that the phrase could give rise to the inference that the findings are not properly rooted in the evidence, had a correct standard been applied. The challenge is not borne out, given the accepted sustainability of the findings on the evidence on a correct application of the standard and burden and the absence of any misdirection.
7. The 2nd ground of appeal challenges the approach to the country background information and relies on the latest Albanian country guidance case of IM (risk - objective evidence - homosexuals) Albania CG [2003]'s UK IAT 00067 (8 September 2003), where the tribunal concluded that

"... There is no country background evidence which supports a reasonable likelihood that homosexuals as such in Albania are subject to any action on the part either of the populous all the authorities which would amount to persecution for the purposes of the Refugee Convention or would be in breach of their protected human rights."
8. The respondent asserts that the latest Albania country guidance and the respondent's policy information note continues to show that Albania is a conservative society where homophobic attitudes persist, but in general the level of discrimination is not such to warrant international protection.
9. Ms Caple asserted that there was no need for the judge to deal directly with country guidance case. The findings that the appellant could not return to his home area on account of a real risk of persecution by his family and community and a lack of sufficiency of protection were not specifically challenged, and the judge's conclusion that internal relocation was not reasonable because of the limited capacity of the shelter for LGBT persons and the difficulties the appellant would have finding accommodation and employment, was sufficient to defend the decision.
10. Ms Capel did not seek to persuade me that the failure to deal with country guidance case was not an error but instead argued that the error is immaterial in the context of the findings on the historical account and that internal relocation would not be reasonable. I am satisfied that the judge

fell into legal error in failing to deal with the country guidance case. The conclusion reached runs contrary to the country guidance decision.

11. The judge found it credible that the appellant had as a result of persecutory threats from his father initially suppressed expressions of his sexuality so as to appear not to be gay, and then having decided to engage in a sexual relationship, agreed with his partner that they would hold hands in public and take the consequences. Further that in the event the consequences were that he received verbal and on an occasion physical abuse from neighbours, who then told his father, who then beat him, and threatened him should he continue such behaviour, and ordered him not to see his partner. The appellant felt compelled to comply with the strictures for fear of further abuse.
12. The factual matrix determined by Judge Greasley falls far short of the examination required in the context of the country guidance case concerning the treatment of gays in Albania to assess risk of persecutory or ill-treatment on return to the home area, and whether there is a sufficiency of protection there as well as safety elsewhere, again in terms of the risk of ill-treatment and sufficiency of protection in those other areas, before turning to the question of reasonableness of relocation for the appellant. There is no consideration, informed by the country guidance case or reasoned disagreement with it, of the background material as to how the experience of past persecution and absence of sufficiency of protection as a minor living in his parents' home transfers to the position of the appellant as an adult with the possibility of living independently of his father. At [50] to [53] the judge refers to country information which supports the historical account but fails to deal with the thresholds for persecutory or ill-treatment warranting protection.
13. I am satisfied that the error cannot be said to be immaterial. It cannot be said that no other outcome could have followed. The failure to take account of the country guidance case, for all the same reasons, infects the assessment of whether there is any place of safety for relocation and whether it is reasonable to require it. I cannot say with any clarity what the outcome would have been on the evidence, including the country information, had the judge correctly self-directed as to the approach to be taken to the country guidance case.
14. Ms Capel suggested in her Rule 24 notice that as the grounds do not bring a specific challenge to the Judges decision that the private life rules are met on the grounds of insurmountable obstacles facing the appellant on return to Albania, because he is a young man still needing the input of adults, that part of the decision should stand. The argument is without merit because the claims were made on the same matrix, i.e. the position of return as a gay man, so that the private life decisions are infected by the error even on the lower standard applicable to the international protection arguments. The decision is predicated on an inadequate consideration of the position on return and it is not possible to gauge what

the outcome would have been had the position on return been correctly assessed.

15. I find that the legal errors are material and that the decision of the Ft-T allowing the appeal on International Protection grounds and on Human Rights grounds must be set aside.
16. I have concluded that because an extensive part of the factual matrix has not been resolved the matter should be remitted to the Ft-T.

Decision

17. The decision of the First-tier Tribunal allowing the appeal on all grounds reveals a material error of law and I set it aside and the matter is remitted to be heard in the Ft-T by a judge other than Judge C Greasley.

Signed

Date 03 February 2018

Deputy Upper Tribunal Judge Davidge