Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12549/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 26 April and 16 August 2018	**On 14 September 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE LATTER

Between

RC
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Burrett, counsel.
For the Respondent: Mr E Tufan, Home Office Presenting Officer (26 April 2018).
Mr D Clarke, Home Office Presenting Officer (16 August 2018)

DECISION AND REASONS

An order has been made under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead to the appellant being identified. Failure to comply with this order could lead to a contempt of court.

1. This is an appeal by both the appellant and the respondent against a decision of the First-tier Tribunal issued on 11 September 2017 allowing an appeal by the appellant on human rights grounds under articles 2 and 3 but dismissing it on humanitarian protection grounds against the respondent's decision of 26 October 2016 refusing him leave to remain following his application for international protection. The appellant is appealing against the decision to dismiss his appeal on humanitarian protection grounds and the respondent against the decision allowing it on human rights grounds.

Background.

2. The appellant is a citizen of Albania born on 17 August 1999. He left Albania in June 2015, travelling to Belgium where he remained for seven months. He then travelled by lorry arriving in the UK on 19 February 2016, subsequently claiming asylum on 14 March 2016. He claimed that as a child he had been the victim of consistent domestic violence from his father and he feared that, if he had to return to Albania, he would be beaten up by his father and he was also in fear of people who had been in conflict with his father.

3. The respondent accepted that the appellant's nationality and identity were as claimed but not that he had experienced problems from his father or from other people. In any event, it was the respondent's view that he would be able to look to the authorities in Albania for protection or, in the alternative, he could move away from his home area and live elsewhere in safety. However, in the light of his age, the appellant was granted a limited period of leave as an unaccompanied child but otherwise his application was dismissed.

The Hearing before the First-tier Tribunal.

4. At the hearing before the First-tier Tribunal the appellant did not give oral evidence and the appeal proceeded by way of submissions only. The judge recorded that at the beginning of the hearing all grounds of appeal were withdrawn save for humanitarian protection and article 8 in regard to bodily integrity alone [30]. She considered the three witness statements filed by the appellant and the documentary evidence she identified at [35] which included a letter from Hillingdon Children's Services confirming that the appellant had been a looked after child since 19 February 2016 and that there concerns about his emotional well-being which had led to a referral to the Mental Health Team. Subsequently, a report dated 13 July 2017 was obtained from Dr R Halari, a Consultant Clinical Psychologist who assessed that the appellant had a clinical picture of PTSD and severe depression and had been a victim of psychological and emotional child abuse by his father which had had a negative impact on his emotional well-being.

5. There was also a letter from the Home Office dated 23 June 2017 confirming that the appellant had been referred to the competent authority due to the allegation that he was a victim of modern slavery but it been found that there were no reasonable

grounds to believe that this was the case and a letter from the British Embassy in Tirana confirming details of the appellant and his family which showed that the appellant had made two trips to Kosovo and had travelled with his father when he left Albania on 20 June 2015.

6. Having reviewed the evidence, the judge found that the appellant was not a witness of truth or credible in his claims. She dismissed in its entirety his claims to have been a victim of domestic violence or trafficking [43]. She found that he was not at risk of harm on return to Albania from his father and it had not been suggested that his father had any influence or links to larger criminal organisations or would be able to track him down in any event. It followed that internal relocation was not an issue and that there was sufficiency of protection [44].

7. However, the judge noted that it was not disputed that the appellant had been a victim of a stabbing in the UK and that his mother had committed suicide after suffering from mental illness in 2014 when he was only 14 [45]. She said it was a matter of concern that Dr Halari's report failed to deal properly with the stabbing or to assess how that contributed to the diagnosis of PTSD and depression [46]. Nonetheless, the diagnosis did confirm those conditions and set out the treatment required and referred to the adverse deterioration that would occur should the appellant be removed from the UK [47].

8. The judge then referred to Paposhvili v Belgium (41738/2010), a judgment of the ECtHR Grand Chamber, which confirmed that there was a procedural obligation on the respondent under article 3 to assess the appellant and to verify whether sufficient and appropriate care was available and accessible to him in Albania and the failure to do so amounted to a breach of article 3 [51]. The judge said that, in the alternative, if the appellant's treatment did not reach the severity to breach article 3, then she found that the decision to remove without first facilitating his ability to access medical care and support upon return would be a breach of article 8 as there were sufficiently adverse effects on his physical and moral integrity [52].

9. The judge summarised her findings at [56] as follows:

> "The cumulative effect of all these serious causes for concern is such that they cause me to conclude the appellant on balance has established satisfactory evidence to show that his article 3 procedural rights have been breached and in the alternative that his article 8 [rights] in regards to his bodily integrity have been breached in the refusal decision in failing to address these material issues. On that basis I allow the appeal."

10. The judge then said that having made her findings of fact the appellant had satisfied her that he was at risk of ill-treatment serious enough to engage either article 3 and 8 [57] but due to her findings she did not find that the removal decision placed the respondent in breach of the 2006 Qualification Regulations and she found the appellant was not entitled to be granted humanitarian protection [58].

The Grounds of Appeal and Submissions.

11. The respondent's grounds of appeal (dated 14 September 2017) argue that the judge was wrong to allow the appeal on medical grounds on the basis of the medical report by Dr Halari and on her interpretation of the ratio of Paposhvili. The judge's approach to the medical report, so it is argued, lacked sufficient analysis and there was no indication that she had considered the guidance given in JL (medical reports-credibility) China [2013] UKUT 145. There was no reference to the leading case of N v Secretary of State [2005] UKHL, subsequently upheld in the ECtHR, confirming the very high threshold required to succeed in a health case under article 3. The judge appeared to treat herself as bound by the decision in Paposhvili but this was not the case to the extent that it ran counter to binding domestic law. In any event, so it is argued, the appellant would not be able to bring himself within the kind of exceptional cases envisaged in Paposhvili.

12. The appellant's grounds (dated 21 September 2017) argue that no concession was made in respect of the asylum claim and that the appeal should have been allowed on either asylum or humanitarian protection grounds. It is argued that the judge's credibility findings were flawed in that the appellant was rightly considered to be a vulnerable witness, but no recognition was given to this status when considering the evidence. The judge had failed to apply the guidance that the appellant should receive the benefit of the doubt as in KS (benefit of the doubt) [2014] UKUT 552. She had said that he was not a witness of truth but had failed to identify what those untruths were and why they were untrue; she had failed to reason adequately why the appellant's account of domestic violence was incredible and had not engaged with the skeleton argument or the submissions made at the hearing.

13. In his submissions, Mr Burrett maintained that the asylum claim had not specifically been withdrawn but that was not to say that the judge was not correct about the way the arguments were framed at the hearing. The appellant had not been called to give evidence as the judge had recognised that he was a vulnerable witness. However, neither he nor the appellant had been given the opportunity of addressing issues which had clearly concerned the judge about the credibility of his evidence.

14. Mr Tufan submitted that the judge had made detailed credibility findings and it could not be argued that her decision lacked reasons. She had identified the different accounts given by the appellant and had taken into account the evidence from the British Embassy in Tirana. She had been entitled to make her findings on the basis of the evidence before her. He argued that the judge had erred in her approach to article 3. The appellant had come nowhere near reaching the high threshold for an appeal to succeed on those grounds. She was wrong to regard herself as bound by Paposhvili when she was bound by N. The appeal could not succeed on article 3 grounds and there were no exceptional circumstances to justify the appeal being allowed under article 8.

Assessment of the whether there is an Error of Law.

15. I am satisfied that the respondent's grounds are made out in respect of both articles 3 and 8. Whilst the judge was correct to say that Paposhvili confirmed that there was a procedural obligation under article 3 to assess whether there was a risk of a breach of that article, that would only arise in cases capable of engaging article 3 and there was no such evidence before the respondent when making her decision. Taking the evidence at that stage, it did not reach the high threshold for a case to succeed under article 3 on medical grounds. Applying the approach in N it needs to be shown that the medical condition has reached such a critical stage that there are compelling humanitarian grounds for not removing him to a place which lacks the medical and social services which he would need to prevent acute suffering in death bed cases. In AM (Zimbabwe) v Secretary of State [2018] EWCA Civ 64, the Court of Appeal confirmed that article 3 medical cases were subject to the high threshold set out in N and this was binding on all lower courts and tribunals.

16. At the hearing the appellant relied on the report of Dr Halari to support the argument that he could meet the article 3 threshold. However, firstly the judge has failed to explain why she accepted the conclusions of that report based on an acceptance that the appellant had been the victim of child abuse when she had dismissed that claim in its entirety and, accordingly, the respondent's grounds based on JL (China) are made out. Secondly, the judge allowed the appeal on the basis that the appellant's procedural rights under article 3 had been breached but the case under article 3 depended upon Dr Halari's report which had not been before the respondent, who in any event had considered the issues arising from the claim that the appellant felt traumatised and needed professional help in the context of his moral and physical integrity within article 8 (see [105]-[112] of the decision letter of 26 October 2016). The judge erred by dealing with article 3 simply on the basis of the procedural obligation rather than assessing that claim substantively. For these reasons I am satisfied that the judge erred in law in her assessment of article 3.

17. I am also satisfied that she erred in relation to article 8. To succeed under article 8, there would have to be an exceptional feature engaging the article 8 paradigm. On the issue of physical and moral integrity, in GS (India) and others v Secretary of State [2015] EWCA Civ 40, the Court of Appeal made it clear that if article 3 could not be met on medical grounds, article 8 would not succeed unless there was some separate or additional factual element bringing the case within article 8. Underhill LJ at para 111 said,

> "First, the absence or inadequacy of medical treatment, even life preserving treatment, in the country of return, cannot be relied on at all as a fact engaging article 8: if that is all there is, the claim must fail. Secondly, where article 8 is engaged by other factors, the fact that the claimant is receiving medical treatment in this country which may or may not be available in the country of return may be a factor in the proportionality exercise; but that factor cannot be treated as by itself giving rise to a breach since that would contravene the 'no obligation to treat' principle".

The errors of law in respect of articles 3 and 8 are such that these decisions should be set aside.

18. I now turn to the appellant's grounds. I am satisfied that there has been a procedural approach which has caused unfairness to the appellant. Mr Burrett said that the appellant went to the hearing having made full witness statements and expecting to give oral evidence and that an interpreter had been booked. However, the judge took the view that the hearing should proceed on the basis that the appellant was a vulnerable witness who should not or need not give evidence and, accordingly, the appeal proceeded by way of submissions only.

19. Whilst this is not exceptional in itself, the appellant or his representative should have had the opportunity of commenting on matters relating to the appellant's credibility which clearly gave considerable concern to the judge as his account of events in Albania and his reasons for leaving was effectively dismissed in its entirety and led to the appeal being dismissed on humanitarian protection grounds, even though it was allowed on human rights grounds. The approach as to how the hearing should proceed led to the consequence, albeit unintentional, of the appellant not having a proper opportunity to put his case on humanitarian protection grounds. This decision is also set aside.

20. In the light of the issues raised in this appeal and to avoid the delay of the matter being remitted to the First-tier Tribunal, I am satisfied that the appeal should remain in the Upper Tribunal for the decision to be re-made. Neither representative objected to this course of action.

21. I made further directions including granting permission to both parties to file further documentary evidence on issues relating to humanitarian protection, article 3 and article 8, including further witness statements of any proposed oral evidence, that the appellant may be tendered for cross-examination, his witness statements standing as his evidence in chief, but if it was decided that he should not give evidence, the appellant's solicitor was to notify the Tribunal and respondent no later than 14 days before the resumed hearing.

22. At the resumed hearing the appellant relied on the bundles 1A and 2A produced before the First-tier Tribunal and two further bundles produced for this hearing 3A containing a further witness statement from the appellant and a letter from Hillingdon Young Peoples' Team dated 1 August 2018 and 4A, indexed and paginated 1-48. By letter dated 2 August 2018 the appellant's representatives wrote to request that the appellant, given his vulnerability, should be exempt from oral evidence. At the hearing before me, Mr Burrett indicated that he did propose to call the appellant to give oral evidence but submitted that, as he was a vulnerable witness, proper allowance should accordingly be made, particularly when he was cross examined.

Further evidence.

(i) Oral evidence from the appellant.

23. The appellant adopted his four witness statements dated 20 May 2016 at 1A, 16-20, 28 November 2016 at 1A, 11-15, 21 April 2017 at 2A, 5-10 and 31 July 2018 at 3A and gave his evidence through an Albanian interpreter. His first three statements are summarised in [32]-[34] of the First-tier Tribunal decision and need not be repeated. In his most recent statement he confirmed that he was still supported by Hillingdon social services and living in accommodation provided them. He said that he did not give different stories in his three previous statements but had always explained the bad things that happened to him when at home. In his third statement he had been asked to explain in detail what happened when his father took him out of Albania and he did so. He also explained about the stabbing. The important thing to him was what had happened to him and his family when they were children at home. He had been granted leave to remain and had permission to work but had submitted his BRP card to the Home Office when he applied for an extension and had not been able to get any work since.

24. He found it very upsetting if he had to talk about the bad things that had happened when he was at home. It had been explained to him that he should get help and at that time social services helped him to go to the doctor. He was told by the social worker that he had been referred to another body to get counselling, but he did not know what had happened to this as no one contacted him to go for counselling. He had thought about going to the doctor but could not bring himself to do so and he did not want to speak about the bad things that had happened to him in Albania.

25. However, as his case was getting nearer, he went to the doctor to get help and counselling but social services moved him to a new address and when he went to the doctor, he was told that, as he had moved, he had to get a doctor in his area but he had not been able to register as he did not have his card showing that he had permission to be here. He had come to the UK as a child but had not been able to get the help he needed for one reason or another. He had had so many problems at school. No one had helped him and he was excluded from school. The only way he knew how to manage was by keeping quiet and trying not to think about the bad things that had happened. He felt depressed and bad all the time and did not know if there was any use going on like this.

26. In cross-examination he denied that he had given different stories at different times. He was asked about the fact that he said in his first statement that he had travelled with his uncle to Brussels and had not mentioned that his father accompanied him. He said that he had not been with his father but that he had been with him in Brussels. He then accepted that he had in fact travelled with his father. He had not said this originally because he had been scared of him. He accepted that he had travelled to Belgium on 20 June 2015 and claimed asylum on 22 July 2015. He had initially gone to a place where his friends were staying but later stayed in other places. He had slept

rough in the open. He got help from people about claiming asylum in Belgium. When asked who had paid for his journey from Brussels to the UK, he said that he travelled free. He had asked around for lorries and that was how he got here. His father had not paid for him: he had run away from him.

27. He said that in Albania no one reported anything to the police because they were scared of his father. He was asked why in his first statement he had said his mother told the police many times that they were being beaten up. He said the police did come round, but he did not say that his mother had spoken to them. The police had come looking for his father on a number of occasions and he said that he did go to prison. He was asked about the letter from the British Embassy which said that there was no record of his father having been in prison, but he said he had been imprisoned for a brawl and had taken someone hostage. He then said that he thought his father went to prison not because of the brawl but because of a shooting.

28. He said that he had been stabbed but he could not remember the date save that it was about six months previously. It was before April 2017 as he had mentioned it in his April 2017 statement. He had been bullied by people at school and had been isolated and had no friends. He was not studying at the moment but instead he intended to study in September, this year. He had been to see a psychiatrist about two weeks ago. Social services used to accompany him but did not do so now. He repeated that he could not go back to Albania where his father was.

(ii) The Addendum to the Psychological Report.

29. There is an addendum dated 13 August 2018 at 4A 3-33 to the psychological report prepared by Dr Halari dated 13 July 2017 at 2A 11-45. In this addendum Dr Halari confirms his opinion that the appellant was a victim of child abuse: he gave a consistent account of events and experiences which were consistent with someone who had been a victim of physical and emotional abuse perpetrated by his father (52). It was also his opinion that the death of the appellant's mother in the circumstances he described had been a very traumatic incident for him, he displayed symptoms characteristic of trauma and had experienced feelings of grief, helplessness, anxiety and possibly even anger (56).

30. In his opinion the appellant was suffering from severe depression and PTSD. This was preventing him from seeking the appropriate psychiatric and psychological treatment. He did not believe that he had dealt with his past trauma and had not seen a medical professional to seek help with his anxiety and low mood. Dr Halari was asked to comment on what effect the appellant's stabbing had had on his mental health and whether it was the cause of his trauma, His response was that the stabbing had been distressing for the appellant and had triggered memories of the abuse and led to symptoms of anxiety and panic, but they were not the cause of his trauma [59].

(iii) The Letter from Hillingdon Young Peoples' Team.

31. There is a letter dated 1 August 2018 from Hillingdon Young Peoples' Team dated 1 August 2018 at 3A confirming that the appellant has been consistently supported as a looked after child. His solicitors had shared the psychological assessment of 13 July 2017, which raised concerns about the appellant's emotional well-being and as a result, a GP appointment was made to share this information, but the appellant did not attend despite efforts made by key worker supporting him at the time. Subsequently, the key worker met with the appellant and booked an emergency GP appointment where concerns were shared with the GP and, as a result of that assessment, the appellant was referred to the Child and Adolescent Mental Health Service but he did not continue with the service and did not respond to contacts and appointments which were offered to him.

32. Counselling had been a matter of on-going discussion with the appellant, but he always maintained that he did not wish to access any emotional services. The appellant was made aware that if he changed his mind, he could access the service through his GP or contact his personal adviser. The appellant had been expelled from college in April 2017 for fighting with other students. Attempts were made to re-engage him in education, but he did not attend appointments or assessments, but he had said that he wished to enrol in another college in September 2018.

Further Submissions.

33. Mr Clarke relied on the respondent's decision of 27 August 2016. The appellant's case was that he had suffered from domestic violence at the hands of his father and had been trafficked to the UK. He submitted that there was no adequate evidence of trafficking in the light of the decision from the competent authority dated 23 June 2017 (3A, 46-56). and the information obtained from the UK embassy in Tirana which provided evidence that his father had accompanied him to Belgium but there was no evidence of trafficking.

34. He further submitted that there were a number of credibility issues making the appellant's evidence unreliable. Although there had been no medical evidence before the competent authority, there were other credibility concerns set out (at 3A, 53-4) which made that decision wholly sustainable. The appellant's further oral evidence raised more factors giving cause for concern and in particular his evidence that he had stayed for one night in one place in Brussels and then slept rough. It was implausible that he could secure passage to the UK without friends or other help to achieve this. Taking due account of the medical evidence, there were many unexplained inconsistencies in his evidence. The appellant had said that he was scared of his father, but it was his father who had taken him to Brussels. It must be reasonable to infer that it would have been his father who paid for his travel to Brussels and then on to the UK.

35. When the appellant's various statements were looked at as a whole, he submitted that his account of events in Albania was a fabrication. There was no substance in his claim that he was not only in fear of his father but also other people who had been in dispute

with his father. The answers to the questions at the original interview at Q30-39, indicated the lack of substance in this aspect of his claim.

36. So far as article 3 was concerned, he submitted that the First-tier judge had been right to make the point that the psychologist had not looked at alternative causes for the appellant's condition. The addendum did not address that issue in any meaningful way. The comment that the stabbing did not cause the appellant's claimed conditions was unexplained: the psychiatrist had still failed to consider whether the stabbings were an alternative cause. He referred to the tribunal decision in JL (China) and submitted that there was no adequate evidence of substance beyond the appellant's account to support the diagnosis.

37. Little weight should be given to the medical report in relation to the appellant's medical condition or to any risk arising from his mental health. On this issue, Mr Clarke referred to the judgment in Y (Sri Lanka) and Z (Sri Lanka) v Secretary of State [2009] EWCA Civ 362 as the relevant authority. The issue of risk needed to be assessed in the light of the factual matrix that the appellant had not sought help in Albania nor until very recently in the UK. In any event, Mr Clarke submitted that the appellant's circumstances did not approach the high threshold set out in N v UK 26505/05 ECtHR Grand Chamber, 27 May 2008 to support a claim under article 3. Further, there was no sufficient private life taken together with the appellant's condition to engage article 8. His appeal could not succeed under para 276ADE of the Rules and his circumstances were not sufficiently exceptional or compassionate to justify the grant of leave outside the Rules.

38. Mr Burrett submitted that the appellant's age when he came to the UK and the fact that his earlier evidence had been given when he was a child should be taken into account when assessing his credibility. He had left Albania in 2015 arriving in the UK in February 2016 as an unaccompanied child with little or no schooling. His mother had committed suicide and there was a dispute as to his father's role in the family. He submitted that the appellant was vulnerable and proper allowance should be made when assessing his evidence. He argued that the appellant's evidence was believable and that his vulnerability weighed heavily when considering the answers given to questions at interview and to his statements and oral evidence.

39. The psychological report set out the appellant's dramatic family background and how he was separated from his family. He had been the victim of domestic violence, which in itself was not necessarily exceptional as there was evidence showing that a high percentage of children were abused in Albania. Account also had be taken of the appellant's low IQ when assessing his detailed interview. He submitted that there was no basis for saying that he had made his claim up. Even if his father did assist him to leave Albania, that was not inconsistent with a history of abuse. Whilst he accepted that in the light of the Court of Appeal judgment in Secretary of State v MS (Pakistan) [2018] EWCA Civ 594, there were constraints on the submissions he could make about whether the appellant had been trafficked into the UK, the fact remained that the competent authority had not had the medical evidence now available.

40. Mr Burrett referred to the judment of the Court of Appeal in AM (Afghanistan) v Secretary of State [2017] EWCA Civ 1123 on the issue of vulnerability. When the factors relating to the appellant's vulnerability were taken with the low standard of proof in a humanitarian protection case, there was, so he argued, a reasonable degree of likelihood that he had been the victim of abuse as a child. So far the psychiatric evidence was concerned, Mr Burrett submitted that it could not be said that the doctor had made a perverse analysis and asked rhetorically in the context of the effect on the appellant of the stabbing, what evidence there was that the stabbing had caused any trauma to him as opposed to Dr Halari's view that it had not been the cause of his trauma. He had had problems even when he first came to the UK and had issues in seeking assistance, but not seeking help in these circumstances was consistent with being abused as a child. He argued that the psychiatric report was comprehensive and supported the appellant's account. The reality, so he submitted, was that there was no treatment available in Albania and the appellant would not be able to get adequate assistance there. He submitted the appeal should succeed on humanitarian protection and article 3 grounds or, in the alternative, under article 8.

Re-making the decision.

41. The basis of the appellant's claim for humanitarian protection is that he has been a victim of domestic violence and trafficking at the hands of his father and is in fear of serious harm either from his father or other people who have been in conflict with his father. When seeking to challenge the decision of the First-tier Tribunal it was argued on behalf of the appellant that he had gone to the hearing, having made full witness statements and expecting to give evidence but the hearing proceeded on a different basis in that the judge had indicated that she did not wish to hear oral evidence and proceeded to determine the appeal on the basis of submissions.

42. Shortly before the resumed hearing a request was received from the appellant's solicitors that he should be exempt from giving oral evidence given his vulnerability but Mr Burrett, who had not been aware of this request and did not pursue it, said that it was his understanding that the appellant would give oral evidence. I was referred to the Court of Appeal judgment in AM (Afghanistan) and have taken into account the Practice Direction and Guidance Note relating to vulnerable appellants referred to at [30] and the five key issues set out at [31] of the judgment. My view was that this was not a case where the appellant's vulnerability was such that he should not give evidence, rather a case where his evidence was necessary to enable a fair hearing and that his welfare would not be prejudiced by doing so, provided the cross-examination took account of the concerns about his vulnerability. Mr Burrett was happy to proceed on this basis and Mr Clarke to conduct his cross-examination accordingly. The appellant gave his evidence through an Albanian interpreter. It was explained to him that if he did not understand any question, he should ask for clarification and if he wanted a break at any stage, he had only to say so.

43. When assessing his evidence, I take account of his age at the time he made the various statements, the concerns expressed by Dr Halari in his report and addendum. In her decision, the First-tier judge set out her concerns about the appellant's evidence at [32]-[44]. She carefully summarised the contents of his first, second and third statements in [31]-[34] and other relevant documents in [35] including the family certificate evidencing that the appellant's father was a widower and had four sons, the death certificate of his mother confirming that she committed suicide at the family home, having suffered from depression and delusional disorders, letters from Hillingdon Social Services and a letter from the Home Office confirming that on 17 March 2017 the appellant was referred to the competent authority in relation to allegations of being a victim of modern slavery.

44. There was also a letter from the British Embassy in Tirana setting out results of enquiries showing that the appellant had made two trips to Kosovo and that he was with his father when he left Albania on 20 June 2015. His father had been sentenced for threats and given eight months custody suspended for two years. There had been no reports by his wife or family members of any cases or incidents of domestic advisers.

45. At [46] of her decision, the judge was critical of the fact that Dr Halari's report failed in her view to deal properly with the UK stabbing of the appellant on 30 December 2016 or to assess how that contributed to the diagnosis of PTSD and depression. She also noted that this incident took place while the appellant was in the care of social services but apparently no steps were taken to obtain proper medical care and support until pressed to do so by the appellant's legal advisers.

46. The judge commented that the appellant had given three different versions of events and presented a different witness statement every time evidence was adduced that his claims were not correct. She said that, despite having mild cognitive difficulties, he nonetheless had sufficient intelligence to tell his story and provide a narrative in detail of three different scenarios to address the evidence adduced. She commented that there was no record registered with local or regional police in Albania of any domestic violence despite him presenting a picture of a violent, drunken father who was routinely in trouble with the police, the evidence obtained by the British embassy confirming that he had only been subject to one conviction leading to a suspended sentence.

47. I have heard further oral evidence from the appellant. The fact that he introduced new elements into his account including the fact that he had slept rough for a period in Belgium casts further doubt on his evidence, as did the contradictions about whether his father went to prison and for what offence. The addendum report from Dr Halari does not meet the concerns, which I am satisfied the judge was right to express, about the failure to consider the impact of being the appellant being stabbed or to assess how that contributed to the diagnosis of depression and PTSD. At [59] the report in substance makes a bare denial that the stabbing was the cause of his trauma, but this is unexplained. I take the medical evidence into account and note the guidance in JL

(China) that the more a diagnosis is dependent on assuming the appellant's account is to be believed, the less likely it is that significant weight will be attached to it. Nonetheless, I take into account Dr Halari's opinion that the appellant has been the victim of abuse by his father as it is not solely based on the appellant's evidence but also on his clinical judgment.

48. I accept that the appellant is a vulnerable person and that this must be given proper weight when considering his evidence. On his own account he has endured a number of very distressing events and in particular his mother's suicide when he was only 14 following her mental illness including delusions. He has been the victim of a stabbing in the UK and he was expelled from college for getting into fights with other students. He has been very reluctant to seek help when it is offered to him.

49. I also take account of the decision of the competent authority that, due to the internal inconsistencies in his account identified in the decision, his credibility was damaged to the extent that his claim to have been trafficked could not be believed. The appellant fails to show that this decision was perverse or not properly open to the decision-maker and he cannot go behind it: MS (Pakistan).

50. The appellant had now had the opportunity of answering the concerns about his credibility but reviewing the evidence for myself, I am not satisfied that there is any reasonable degree of likelihood that the appellant's account of events in Albania and his reasons for coming to the UK are true. There are extensive inconsistencies in his statements identified in the First-tier decision and in the competent authority's decision and there is no satisfactory explanation for so many discrepancies. The appellant's evidence about events in his family in Albania is contradicted by the results of the inquiries made by the British embassy in Tirana. I accept that the appellant, in the light of the matters set out in [48] above, can properly be regarded as a vulnerable person but he had no difficulty when giving evidence in understanding or answering the questions. I take Dr Halari's opinion into account, but I am satisfied that it is outweighed by the other factors I have identified. Making full allowance for the appellant's age and background and looking at the evidence as a whole in accordance with the lower standard of proof, I do not find his evidence about being at risk from his father or anyone else in Albania to be credible.

51. In any event, on the issue of humanitarian protection, the judge found that the appellant could look to the Albanian authorities for protection. This issue was also considered at [42]-[71] of the decision letter and no sufficient evidence has been produced to show that this evidence is unreliable or that the appellant in his particular circumstances would not have access to adequate protection.

52. I now turn to article 3. In the First-tier Tribunal, the judge allowed the appeal on article 3 grounds following the judgment in Paposhvili. For the reasons already set out in [15] – [16], that issue could not be resolved simply on procedural grounds in a merits appeal but had to be considered substantively. I am not satisfied that the appellant's condition set out in Dr Halari's reports reaches the high threshold for a breach of article

3 as set out in cases such as N v UK. I am also not satisfied that the evidence supports a claim that there is a real risk of self-harm or a serious deterioration in his psychiatric or psychological presentation on return to engage article 3. His claimed fears about his father are unsubstantiated and, in any event, there is no evidence of any substance to refute the respondent's evidence that the appellant would be able to access treatment for mental health issues in Albania, set out in [109]-[110] of the decision letter and referring to the medical facilities available there, including a substantial mental health programme.

53. So far as article 8 is concerned, whilst there can be circumstances in which article 8 may be involved in mental health cases where the article 3 threshold is not reached, this is only where there is some separate element or factor falling within article 8. The only possible additional element for the appellant is his private life, primarily his residence in the UK since 2015. However, he cannot meet the private life requirements of the Rules within para 276ADE and I am not satisfied that in his circumstances there is any separate or additional factual element to bring the case within article 8 in accordance with the approach set out by the Court of Appeal in GS (India). Even if article 8 is engaged, his removal would be proportionate to a legitimate aim not least in the light of the fact that medical treatment is available in Albania. In the light of these findings of fact, this is not a case where it is arguable that there are exceptional or compassionate circumstances to justify the grant of leave outside the Rules.

54. Accordingly, I am not satisfied that the appellant is entitled to humanitarian protection or to a grant of leave under either article 3 or article 8.

Decision

55. The First-tier Tribunal erred in law and the decision is set aside. I substitute a decision dismissing the appeal on asylum, humanitarian protection and human rights grounds.

56. In the light of the issues raised in this appeal and the age of the appellant, I am satisfied that this is a proper case for an order to be made under Rule 14 (1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and I confirm the order made on 26 April 2016 prohibiting the disclosure or publication of any matter likely to lead to the appellant being identified.

Signed H J E Latter Date: 24 August 2018

Deputy Upper Tribunal Judge Latter