



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

Appeal Number: PA/02882/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 19 July 2019**

**Decision & Reasons Promulgated
On 31 July 2019**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**OLTJON [S]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr L Youssefian, Counsel instructed by Malik & Malik
Solicitors

For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of Albania, has permission to challenge the decision of Judge Moore of the First-tier Tribunal (FtT) sent on 30 May 2019 refusing his protection claim. The basis of the appellant's asylum claim was that in early 2015 he had been attacked and stabbed by an individual he believed to be named [LL] and would be in danger from this man wherever he was returned to in Albania. His best friend, [H], had also been stabbed in June 2015 and left fighting for his life and the appellant

believed the same [LL] was again the assailant. Although accepting that the appellant had been the victim of a stabbing, the judge did not find credible his account that [LL] was the perpetrator either of the appellant's or his friend [H]'s stabbing. The judge also considered that in any event the appellant had not demonstrated that [LL] had any influence over the police or the authorities in Albania and that the appellant would also have a viable option of internal relocation.

2. The appellant's grounds were two-pronged, it being first submitted that the judge's adverse credibility findings were flawed, relying unduly on (im)plausibility findings and the fact that the appellant was a minor at the time of the claimed events. The appellant's second ground alleged that the judge's assessment of the evidence rested on a mistake as to fact regarding whether he was still involved with his girlfriend Angela (it being [LL]'s obsession and jealousy over the appellant's relationship with Angela that was said to have precipitated [LL]'s attack on the appellant).
3. I am grateful to Mr Youssefian and Ms Everett for their well-presented submissions.
4. Dealing with ground 2 first, I am persuaded that it discloses an error of law in the judge's treatment of the appellant's evidence regarding Angela. It was submitted by Mr Youssefian (who also represented the appellant at the First-tier hearing) that the appellant's evidence before the judge was that he had resumed contact with Angela and was in communication with her. The appellant had said that Angela had provoked [LL] by saying that the appellant was going to take her to the UK. The judge's summary of the evidence does not refer to such evidence having been given, but Ms Everett does not dispute the statement in the grounds that evidence to this effect was given and there was no Rule 24 response asserting to the contrary. Against that background there is a serious difficulty with the judge's finding at paragraph 32 that "the appellant is no longer in any relationship or friendship with Angela".
5. I also see force in ground 1 insofar as it identifies an over reliance on the part of the judge an implausibility finding. Nowhere does the judge evaluate to what extent the appellant's account was consistent, internally and externally, or possessed a sufficiency of detail. Although he does not refer to lack of plausibility expressly, the judge's principal reasons for finding the appellant not credible were that it was not plausible of the appellant to assume the police failed to make proper enquiries when his parents reported the stabbing incident and not plausible that there was any connection between the appellant's and [H]'s stabbing.
6. However, I am not persuaded that the judge's erroneous treatment of the appellant's credibility amounted to a material error of law. That is because the judge's decision sets out reasons and findings in the alternative. They make clear that even if the appellant's account was accepted that [LL] was his assailant and also his friend's [H]'s assailant, the appellant had not established that he would not be able to obtain

effective protection from the authorities in his home area or in other parts of Albania. At paragraphs 33 – 36 the judge stated:

“33. I do not accept that the appellant’s stabbing was reported to the authorities, but for completeness I should add that even if I was so satisfied, my decision in this appeal would be the same. Despite the appellant’s account that the authorities were informed by his parents of the stabbing, the police did not visit or speak to the appellant in relation to the incident, and the absence of such process is inconsistent with the background material (Country Information and Guidance Albania – July 2017). It would appear that, despite corruption within the judicial system, there was an effective police system in Albania and that citizens were free to seek police protection in circumstances such as the appellant’s. The appellant has failed to demonstrate that [LL], as a non-stage rogue agent has any influence over the police or the authorities in Albania. No evidence has been provided demonstrating that his family have any such influence or power. The appellant’s claim that he could not approach the police or authorities in Albania for assistance due to the fact that [LL] had not been arrested is in my view not a reasonable explanation, if the appellant was in genuine fear of this individual, which I do not accept.

34. I am satisfied that internal relocation would be a viable option if this appellant was in fear of [LL]. Despite the relatively small size of Albania, the appellant could relocate to another part of the country since I am not satisfied that [LL] had any adverse interest in the appellant, and if he did, that he would have the intent, power or influence to locate the appellant and place the appellant at real risk.

35. The appellant remains in contact with family in Albania, and he gave evidence that approximately one month ago he spoke to family members and as far as they were concerned [LL] had not “done anything” as far as they were aware, apart from the fact that according to the appellant his brother was “scared something might happen to him”. It is mere speculation on the appellant’s part that [LL] continues to have any interest in him, and even if he did, whether this appellant would be at real risk if now returned to Albania.

36. My negative credibility findings fundamentally undermine this appellant’s claim. I am unable to accept it. The only aspect of the appellant’s claim I am able to accept is that he is national of Albania and that someone may have stabbed him before he came to the United Kingdom.”

7. In essence, the judge in these passages considered that even assuming that [LL] was his assailant and that the appellant was likely to be targeted by [LL] on return, the appellant had not shown he would be unable to receive effective protection. The judge’s finding that there is in general a sufficiency of protection in Albania, was based on background country evidence and this finding has not been disputed in the appellant’s grounds. Therefore the appellant was only entitled to succeed in showing

he in particular would not receive effective protection if there was objective as well as subjective evidence to show that [LL] had influence over the police or other authorities. The only evidence regarding this was the appellant's own claims that [LL] was dangerous and troublesome and well-known in the area for "terrorising and intimidating people". Yet the appellant failed to produce any supporting evidence to substantiate this claim, notwithstanding his claim that this man was "well-known" to be dangerous.

8. The judge noted that before him Mr Youssefian had argued that there was a duty on the respondent to make particular enquiries regarding [LL] or his family, but in my judgment the judge was entitled to assume that the appellant had not substantiated this part of his claim, without expecting the respondent to take any positive steps to verify.
9. Mr Youssefian sought to argue (echoing a point made in his written grounds) that if the judge's adverse credibility findings were erroneous, then such an error was "so fundamental that it would have materially affected the whole of the determination including availability of sufficiency of protection and internal relocation". I am unable to agree. Mr Youssefian sought to argue that the judge's findings in the alternative were premised on a rejection of the appellant's claim that [LL] had no adverse interest in him, but I do not consider that a fair reading of paragraph 33, which in effect took the appellant's claim at its highest.
10. Taking the appellant's evidence at its highest did not overcome the absence of any objective evidence to support the appellant's claim that [LL] had power and influence over the police and authorities, either in the appellant's home area or elsewhere in Albania.
11. For the above reasons I conclude that despite errors in assessment of the appellant's credibility, these were not material and the judge was entitled to dismiss the appeal on the alternative basis that the appellant had failed to substantiate his claim that he would not receive sufficient protection in his home area or other parts of Albania.
12. To conclude:

The judge's decision to dismiss the appellant's appeal is not vitiated by material error of law and accordingly it shall stand.

No anonymity direction is made.

Signed

Date: 28 July 2019



Dr H H Storey

Judge of the Upper Tribunal