



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05701/2019

THE IMMIGRATION ACTS

Heard at Field House
On 12 October 2020

Decision & Reason Promulgated
On 23 November 2020

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

Q C (ALBANIA)
[ANONYMITY ORDER MADE]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the appellant: Ms Kate Jones of Counsel, instructed by Virgo Solicitors

For the respondent: Mr Tony Melvin, Senior Home Office Presenting Officer

Anonymity order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of Q C who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of him or of any member of his family in connection with these proceedings.

Any failure to comply with this direction could give rise to contempt of court proceedings.

DECISION AND REASONS

Decision and reasons

1. The appellant appeals with permission against the decision of the First-tier Tribunal to refuse him international protection under the Refugee Convention, humanitarian protection or leave to remain in the United Kingdom on human rights grounds. The decision of the First-tier Tribunal has been set aside for remaking in the Upper Tribunal, with reference both to the credibility of the appellant's account, and the expert country evidence of Dr Tahiraj.

Background

2. The appellant is an Albanian citizen, born in the capital city of Tirana in September 1999. His core account may be summarised as follows. He attended school only until 2010, when he was 11 years old. His mother insisted he left school: the appellant was needed to support the family by selling various items on the streets and in a market place in Tirana. Theirs was a poor family, with the appellant's father working as a handyman and his mother a housewife.
3. In July 2013, when he was 13, the appellant says he was approached by two men while he was working in the market. They asked if he would like a new job, working with sheep and cultivating tomatoes. The appellant accepted, after consulting his parents. His understanding was that the money he received would be better than he was earning.
4. The two men drove him to an old house in a village called Fushë Lurë, where he spent a week, staying in the house and helping care for the sheep. Then he was moved to a different house, where he cultivated crops with 10 other young people: although he expected that the crop would be tomatoes, he was later told it was cannabis.
5. The appellant did have contact with his family while he was there, but not often. The workers were badly treated: they had to work very long hours and did not get enough food. They worked from morning to evening, 12-13 hours a day, then slept the rest of the time. The appellant only ever met two men from the gang. The workers were not guarded at the farm, and the two men were not there 24 hours a day: they came and went.
6. The appellant was paid sometimes for his work, but not consistently. He saved up about 500,000 LEK (about £3600 today) in his pillowcase. The appellant tried to escape once from the cannabis farm, but was recaptured and punished by having his thumb cut with a knife. A doctor was called the next day to treat his injured finger: the tendons had been cut, and it needed stitches.
7. In 2015, when the appellant was 15, the traffickers took him to apply for a passport as there might be opportunities for him to traffic drugs abroad. The appellant eventually escaped in August 2015: the traffickers failed to appear that day, alternatively there was a police raid and he escaped in the ensuing chaos. He took the savings out of his pillowcase, and his new passport, and with the other workers he walked away.

8. After about an hour, they were picked up by a passing minibus and taken to Tirana. The appellant went home and told his parents what had happened. He gave his mother the money he had saved up.
9. In early November 2015, the appellant left Albania: his father had organised his journey. The appellant's father accompanied him on the flight to Italy, and the appellant then travelled on alone, by train to France, and then by lorry to the United Kingdom, entering clandestinely on 23 November 2015. He would have been 16 years old then.
10. The next day, the appellant presented himself at London Borough of Waltham Forest Children's Services. A social worker contacted the Home Office about making an asylum claim appointment for him. He claimed asylum on 19 January 2016 and had a screening interview the same day. At his screening interview he gave different dates (2011-2013) for his cannabis farming period. His asylum interview was on 21 April 2016.
11. The appellant has a valid Albanian passport, which he renewed recently at the Albanian embassy in London, and an Albanian identity card, issued to him by the Embassy as he is now an adult Albanian citizen. On 4 September 2020, he married his EEA partner in the United Kingdom. He is now 20 years old.
12. The appellant's fear is that if returned to Albania, the traffickers will find him and either kill him or force him to work for them again.

NRM decisions

13. The appellant benefited initially from a Reasonable Grounds decision in his favour: on 25 January 2016, the respondent accepted that there were reasonable grounds to believe that he had been trafficked within Albania for the purpose of forced criminality. The positive decision was made to a lower standard of 'I suspect but cannot prove'.
14. The Conclusive Grounds decision, made on 8 August 2016 to the civil standard of balance of probabilities, was negative. The respondent identified a number of credibility issues which caused her to reject the appellant's core account:
 - (a) That the appellant had said, in his witness statement, that his mother told him to take the farming job, as the family needed the money, while in his asylum interview he said he wanted to take the job as it was a better job.
 - (b) That it was inconsistent that the appellant received some pay for his work on the cannabis farm, albeit he had no means of spending it, meaning that he was not held against his will;
 - (c) That it was not credible that the gang took the appellant to the Albanian authorities (described, erroneously, in the Conclusive Grounds decision as the 'Albanian Embassy'), to get a passport, when he was only 15, although the UN Refugee Agency website indicated that to obtain a passport under the age of 16,

one would need to be accompanied by a parent or legal guardian, or a representative with a special proxy arranged through an attorney;

- (d) That the cutting of the appellant's thumb during an escape attempt, following by medical treatment by a local doctor, was not consistent with the illegal nature of the enterprise and the gang's fear of discovery;
- (e) That the appellant gave differing accounts of his escape, saying the in his witness statement that it was during the chaos caused by a police raid, and in his asylum interview, that the men failed to return and he decided to escape;
- (f) That the appellant said in his witness statement that the gang also abused his father, but in his interview, that he was the only one who had problems with the gang;
- (g) That the appellant delayed leaving Albania, despite his claimed fear; and
- (h) That the appellant's father disappearing in Italy having 'gone to buy something' was not credible, so soon after they left Albania together.

15. The Secretary of State rejected the appellant's entire account. She set out the relevant parts of her Guidance, in particular that:

"...in a child trafficking case, the means [threat, use of force or other form of coercion etc] component is not required, as they are not able to give informed consent. Child human trafficking will therefore consist of two basic components, 'action' and 'exploitation'."

16. The respondent accepted that at all material times, the appellant was a minor. She then considers whether the appellant was recruited, transported, transferred, harboured or received for the purpose of forced criminality, which the Guidance defines as:

"... The exploitation of a person to commit: ...

- Drug cultivation, and
- Other similar activities which are subject to penalties and imply financial gain."

The respondent noted that European Directive 011/36/EU defines such activities as a form of forced labour or services, as defined in the ILO Convention No 9 Concerning Forced or Compulsory Labour [1930], but comments that in the Secretary of State's guidance, 'the exploitation of a person for criminal activity only falls within the scope of the definition of trafficking in human beings when all the elements of forced labour or services occur'.

17. The Competent Authority's rejection of the core account meant that the Secretary of State did not believe that the appellant had been held against his will and forced into cannabis cultivation. The Secretary of State did not accept that the appellant was a victim of modern slavery or had been trafficked for the purpose of forced criminality.

Refusal letter

18. In a refusal letter dated 21 March 2019, over 3 years after the appellant's initial asylum claim, the respondent refused to grant the appellant asylum, humanitarian protection, or leave to remain on human rights grounds. He was 19 years old then and an adult. Paragraph 362ZC (unaccompanied asylum-seeking child leave) was no longer applicable.
19. In the refusal letter, the respondent accepted that the appellant was an Albanian citizen but rejected his claim to have been trafficked into drug cultivation, or to have escaped from his traffickers. As his core account was rejected, she also did not accept that the appellant would be at risk on return from the claimed traffickers. She identified a number of inconsistencies in the appellant's accounts which underpinned a negative credibility finding.
20. Even had the appellant's claim been accepted as credible, the respondent considered that he had the option of accessing state protection on return and/or exercising an internal relocation within Albania away from the risk areas relied upon: Domje (Tirana) and Fushë Lurë. Surrogate international protection was not required. The humanitarian protection, and Article 2 and 3 ECHR claims fell with the asylum claim.
21. The Secretary of State also rejected the appellant's Article 8 private and family life claim. In March 2019, he was a single man with no partner, who had spent only three of his 19 years in the United Kingdom. He had not demonstrated very significant obstacles to his reintegration in Albania on return (paragraph 276ADE(1)(vi)). The appellant still had family in Albania, and was a native Albanian speaker.
22. There were no exceptional circumstances for which leave to remain should be given outside the Immigration Rules HC 395 (as amended).
23. The appellant appealed to the First-tier Tribunal.

First-tier Tribunal decision

24. First-tier Judge Sullivan also found the appellant's evidence to lack credibility. The appellant's account now was that he wanted nothing further to do with his family as they had failed to support him and ill-treated him in the past. That contrasted poorly with his account earlier that he had returned to his family home after escaping the traffickers, lived mostly with them until he left for Italy in November 2015, and that his father had accompanied him on the first part of his journey and arranged and paid for his travel.
25. At the hearing, the appellant raised a 'new matter': he had begun a relationship with an EEA national, whom he planned to marry. The Home Office Presenting Officer declined to give consent on the respondent's behalf for that to be dealt with as part of the First-tier Tribunal appeal and it was therefore excluded from consideration in the First-tier Tribunal and I am also not seised of it.

26. The First-tier Judge dismissed the appellant's appeal and the appellant appealed to the Upper Tribunal.

Permission to appeal

27. The appellant's grounds of appeal contended that the First-tier Judge had erred in her approach to the impact and significance of his young age and vulnerability. Whilst it was right that at [18] the judge had referred to the Joint Presidential Guidance Note No.2 of 2010, she did not appear to have given weight when assessing credibility to his youth when the screening and asylum interviews took place.
28. The appellant relied on the guidance given by the Upper Tribunal in *JL (medical reports: credibility) China* [2013] UKUT 00145 (IAC) and in particular the error identified at [26] in relation to the Joint Presidential Guidance Note: an appellant's youth or vulnerability should inform assessment of discrepancies in the written record.
29. The second ground related to the treatment of the expert evidence of Dr Enkeleida Tahiraj, a senior fellow at the London School of Economics, which related to the plausibility of the appellant's account of his history in context of her expert knowledge of Albania and of other academic resources.
30. The appellant argued that the First-tier Tribunal had committed the *Mibanga* error by reaching a credibility finding without considering the expert evidence, which was material to the outcome. The appellant also cited *Y v Secretary of State for the Home Department* [2006] EWCA Civ 1223 at [27] in the judgment of Lord Justice Keene, with whom Lord Justices Ward and Carnwath agreed: a decision maker must 'look through the spectacles provided by the information he has about conditions in the country in question'.
31. Finally, the appellant argued that the First-tier Judge's credibility findings were speculative and that the matters relied upon were not put to the appellant in his oral evidence.
32. First-tier Judge Osborne granted permission to appeal on the basis that 'in an otherwise careful decision, it is at least arguable that the judge failed to consider, or even mention, the evidence of the expert Dr Tahiraj, upon whose evidence the appellant relied'. All grounds were to be argued.

Rule 24 Reply

33. There was no Rule 24 reply.

Error of law decision

34. On 22 January 2020, the Upper Tribunal found a material error of law in the First-tier Judge's decision in overlooking the evidence of Dr Tahiraj, and set aside the decision for remaking in the Upper Tribunal.

Procedural matters

35. On Friday 13 January 2020, there was an abortive remaking hearing. The appellant appeared without a representative, having received an email from Virgo Solicitors to say that Counsel would not be attending. An apologetic email was received from Mr Glenn Corney of Virgo Solicitors explaining that the hearing had not been entered into Counsel's diary. The hearing was adjourned, with costs reserved. On 3 April 2020, there was a case management review by BTMeetMe. Ms Jones said that the appellant and his partner had now attended their local Register Office and given notice of intention to marry.
36. Ms Jones applied again for Article 8 family life between the appellant and his EEA citizen wife to be included in the substantive remaking. Mr Melvin maintained the Secretary of State's objection, with reference to section 85(5) of the Nationality, Immigration and Asylum Act 2002 (as amended). Absent the consent of the Secretary of State, the Upper Tribunal is not seised of any issue regarding the appellant's private and family life with his EEA citizen wife. The appellant has made an application to be recognised as the spouse of an EEA national.
37. The Upper Tribunal remains seised of the international protection appeal, and of the appellant's Article 8 ECHR claims so far as they do not arise from his relationship with his now wife.
38. That is the basis on which this appeal came before the Upper Tribunal on 12 October 2020 for substantive remaking.

Appellant's evidence

39. The appellant adopted his witness statement and confirmed that he could understand English sufficiently well to check it himself. The content of the witness statement was true. Ms Jones, his Counsel, confirmed that the appellant's English was excellent: the appellant said he had taken GCSE examinations here and could read and write English very well, but asked for an Albanian interpreter in case he did not understand something, or needed help with terminology.
40. The appellant gave his evidence in Albanian, with a short break when the interpreter lost connection. The appellant needed a break by then. Otherwise, he coped well and was calm and responsive in his evidence to the Tribunal.
41. The appellant's oral evidence, both in chief and in cross-examination, was largely consistent with the account summarised at [2]-[12] above and will not be repeated here. He confirmed that he had been able to renew his Albanian passport, and get an identity card, at the Albanian Embassy in London. He needed them for his marriage. He confirmed the date of his marriage to his EEA partner as 4 September 2020 and that he had made an EEA spouse application.
42. Ms Isherwood asked the appellant about his private life in the United Kingdom. The appellant said that in the First-tier Tribunal hearing bundle, there were statements

from friends, staff and teachers (at pages 49ff). Ms Isherwood did not cross-examine on those letters and they stand unchallenged.

43. In relation to his educational achievements in the United Kingdom, the appellant said he had included all the qualifications he had obtained here, including Level 1 of a bricklaying qualification. Level 2 required site experience, and he was not allowed to work, so he had not been able to advance further with that practical qualification. He had tried hard to build a decent life here and did not want to return.
44. The appellant denied having come to the United Kingdom only to better himself, asserting that he remained afraid of the traffickers. He did not know whether they were still interested in him, but he had been badly frightened when they cut his finger for trying to leave. Although they had provided medical treatment, the tendons in the appellant's finger were still damaged now. He had not seen a doctor in the United Kingdom about them.
45. The appellant said that when he escaped the traffickers, he took the passport they had helped him get, and the money from his pillowcase, and ran, with everyone else, until a minibus picked them up and took them back to Tirana. He handed over the money to his mother and did not use it to pay for the onward journey.
46. The appellant was asked about his journey in 2015, to Italy, then by train to France, and by lorry to the United Kingdom. His father had arranged it because the appellant was in danger, but had accompanied him only as far as Italy. It had not occurred to the appellant to approach the Italian or French authorities for asylum; he just did as he had been told to do, and got on the train, and then a lorry.
47. The appellant said he had not tried to contact his family in Albania. They had always used him, and he did not want to contact them. He had run away because he was frightened. His parents and other family members were still at the same addresses in Albania, as far as he knew, but he did not know whether they had had any difficulty with the traffickers, because of his lack of contact with them.
48. There was no re-examination.
49. It was agreed that there would be written closing submissions and I reserved my decision.

Documentary evidence before the Upper Tribunal

Appellant's qualifications

50. The bundle contains a copy of the following documents:
 - **October 2016 - April 2017:** Haringey Education and Business Partnership certificate of successful completion of an ESF funded Work Related Learning and Personal Development Programme;

- **June 2016:** Pearson Edexcel ESOL Skills for Life, Entry Level Personal and Social Development, Functional Skills Level 2 Mathematics, and BTEC Entry Level IT Users at level 3, with appropriate supporting credits;
- **July 2017:** Pearson EdExcel Level 1 for Personal and Social Development, and for ESOL Skills for Life, with appropriate supporting credits;
- **Undated:** British Safety Council Level I award in Health and Safety in a Construction Environment;
- **2017/2018:** Reading Ahead certificate of achievement in reading.
- **February 2018:** City and Guilds Level 1 Diploma in Bricklaying with Level 2 Health, safety and welfare in Construction, with appropriate supporting credits;
- **June 2018:** English language Grade 2 AQA GCSE and Pearson Level 1 Mathematics with appropriate supporting credits;

It is clear from these documents that the appellant has used his time in the United Kingdom wisely, acquiring basic IT skills, mathematics, English, bricklaying, and social and financial skills and preparation for work.

Letters of support

51. There are letters of support from all members of the appellant's wife's family, saying they approve of him, and that he is smart, hardworking, kind and respectful and has achieved a lot academically. He would be an asset to the United Kingdom if he remained here, they say.
52. Two letters from the appellant's now wife, one undated, and one dated 3 October 2019, say that their relationship began in September 2016 and is a serious and permanent relationship. She says that she loves him deeply but is intent on getting her qualifications in the United Kingdom. She is working hard to learn her third language, English, but does not feel she could adapt to living in Albania, or would be accepted there. They had raised each other here, in the absence of their parents. They understand each other very well.
53. A letter from the appellant's former roommate says that he thinks of the appellant as a brother, and has watched his personal growth, ambition and development. He learned English really fast, and is smart and hard working. He admires the appellant's maturity and kindness.
54. A letter of support from Mark Darby at the Atlantic Care and Accommodation Division reflects the appellant's conduct at the 24-hour semi-supported unit where he lived between November 2015 and September 2017. He has kept in touch with the appellant subsequently and considered him a pleasure to work with, well liked, and full of potential and growth. He was dedicated to his education, with excellent punctuality, attendance and superlative grades. He inspired the other young people to be like him, and continued to do so.

55. A letter from Haringey Sixth Form College sets out the appellant's academic record, describing him as a serious and hardworking student, extremely motivated to improve his English and build a future in the United Kingdom. He had made rapid progress, was polite, friendly and kind, and a very popular student. He was continuously respectful and helpful to the teachers and students at the College. Letters from his ESOL teachers at the same college describe him as showing curiosity, interest and determination to overcome significant difficulties, being valued and respected by teachers and students alike, and working hard, making a clear effort to integrate with British values and society. He developed 'firm ICT skills' and worked well in mathematics. His teachers were sad to say goodbye to him and wished him well, seeing for him a bright future in manual trades in which he had developed skills.
56. A letter from Atlantic Lodge Supported Living said the appellant was provided with semi-independent accommodation within the community. When he became too old to be permitted any more education, the appellant went at least twice a week to the library with his now wife, who is described as 'also highly driven by education'. The appellant was tidy, with good personal hygiene and highly organised. He was confident in chasing up concerns with the relevant professionals: local general medical practitioners, opticians, dentist and so on.
57. The appellant would always go the extra mile, helping people round him to move up with him. He cooked capably for himself, his fiancée and friends. He wanted to pursue a career in business, and in due course, to own his own restaurant or food shop. The appellant had undertaken voluntary office and administration work at Atlantic Lodge in a professional, reliable and diligent manner. He was stable and independent.
58. The appellant had stayed in touch with the other young people he met in the supported accommodation, who came from places such as Sierra Leone, Afghanistan and Turkey. They met at least once a month, and the appellant saved money so as to be able to contribute to the joint restaurant meal or activity they organised.

Dr Enkeleida Tahiraj's report

59. Dr Tahiraj's report is dated 2 October 2019. She has both British and Albanian citizenships and has researched human rights, social policy and employment, as well as engaging men and boys in reducing gender-based violence in Albania, between 2012-2016, including in-country research. As a senior consultant for UNDP and UNICEF, she helped draft the National Strategy for Social Inclusion and Social Protection in Albania between 2013 and 2020. She has lectured at University College London and is a member of the London School of Economics academic network on social cohesion in south-eastern Europe. It is clear that Dr Tahiraj is well placed to assist the Upper Tribunal from her experience and research.
60. Dr Tahiraj recognised that assessment of the credibility of an account was not within her remit. The appellant's account of working as a child was plausible, although child labour illegal in Albania. Child labour was mostly used in agriculture, though

some children worked in mines or construction, or were exploited in drug trafficking and on cannabis farms. Those children who were forced to work unlawfully were not paid and were exploited. Missing school was common, for those engaged in work for their families.

61. That said, there was very little if any reference to boys being trafficked, although some was emerging now. The data was still being examined. Children and young males were among those trafficked for delivering or cultivating drugs, with organised crime groups moving victims relatively freely across porous borders, normally using deception rather than force.
62. Engaging children to work in drug cultivation or delivery led to them being considered as 'lucky to be able to bring home some income'. There was no stigma associated with such work: they were not killing anyone, just finding a means to survive. People were obliged to take this work because there were no jobs.
63. Child workers travelled on minibuses to and from work, and were not allowed a phone or camera with them. The minibuses had no windows or number plates, and were always accompanied by an outrider car. The police knew them. Sometimes, family members were directly responsible for the recruitment and exploitation of male trafficking victims. They would often then be taken into an European Union country by a family member, after which they would connect to a destination country or seek asylum in Europe.
64. Fushë Lurë, where the appellant said he had worked on a cannabis farm, was known for cannabis production. In 2015, around the time the appellant made his escape from the farm, the Albanian police had carried out an operation called 'Autumn in Lurë' and arrested 4 people, sequestering 11 kg of marijuana, firearms and munitions.
65. There was significant corruption around the issue of passports and it was not unlikely that the gang could have obtained a passport for the appellant, even though he was still a minor and parental consent was required.

Asylos/ARC Report: *Albania: trafficked boys and young men* [May 2019]

66. This report intends a comprehensive study of the position of trafficked boys and young men in Albania, seeking to fill gaps in the country of origin literature. It is a joint project between Asylos and the ARC Foundation, formerly known as
67. Both Asylos and ARC seek to provide country evidence to support the credibility of individual testimony and/or prove persecution, where refugees and their legal representatives find it difficult to access that information. ARC says that "accurate, reliable, relevant, current, objective, traceable and transparent Country of Origin Information (COI) ...[is] central to refugee status determination in order to inform decision makers about conditions in the countries of origin of asylum applicants and to assist them in establishing objective criteria as to whether an asylum claim is well founded".

68. The Asylos/ARC report is a collection of international sources. It acknowledges a dearth of evidence or analysis of the trafficking of boys and young men in Albania. In January 2019, Dr Edlira Haxhiymeri was interviewed for the report. She acknowledged that no research had been done about the profiles of trafficked boys and young men in Albania, but her opinion was that the risk factors for trafficking of Albanian boys included poverty, low education, physical or mental disabilities, domestic violence and/or sexual abuse within the family, or an existing blood feud. A source at Caritas Albania agreed that the same criteria were applicable to Albanian boys. Other factors mentioned in the Asylos/ARC report, such as sexual orientation, gender identity, or Roma or Egyptian ethnicity, are not relevant to the present appeal. Roma and Egyptian boys are considered to be at primary risk of trafficking.
69. The family background of trafficked boys tended to be abusive, neglectful or unsuitable for their needs, characterised by verbal and physical abuse. Sometimes one parent was dead and the other unable properly to care for the child; some boys had been abandoned by both parents. A lack of stable family support was a factor. Boys living on the street were at enhanced risk, being targeted by adults and seduced into forced criminality or sexual exploitation for shelter, food, and sometimes a little money (see *Different and Equal: Falling through the cracks! The trafficking of men and boys in Albania*, January 2015, cited in the Asylos/ARC report).
70. Many other sources cited in the Asylos/ARC report are to the same effect. Poverty, of the boy or the family, is a known risk factor, particularly where children were homeless and living on the street. The link to domestic violence is emphasised again in this context.
71. An interview conducted by ARC with James Simmonds-Read from the children society says that domestic violence has been the case for every single Albanian boy he worked with, experiencing violence and witnessing violence to siblings and their mother, and being exploited very young due to family members not wanting to look after them.
72. Professor Haxhiymeri is quoted as saying that there was an expectation that a boy would begin working and supporting his family from the age of 14, and that any 'offer of work' presented an opportunity to do that. Boys in this position did not perceive themselves as 'victims': they and their families saw themselves as 'working'.
73. Trafficked boys had a much lower education level, usually having been at school for only 5½ years, while on average, Albanian boys attended school for almost 12 years. The interruption to schooling, which increased their risk of trafficking, was normally a consequence of other circumstances such as poverty, an unstable family situation, early engagement into child work, and so on.
74. Research from the Children's Society, and an interview with Dr Stephanie Schwandner-Sievers, confirmed that assessment, qualifying lack of education as inability to access education. Dr Schwandner-Sievers said that there was a strong expectation that men would provide for their families, and if they could see no other route, economic stress might drive boys to criminal enterprises in order to earn

money for their families. The profile of a typical trafficker was another young man, often a relative, and often living abroad.

75. The United Kingdom Home Office Fact-Finding Mission acknowledged that parents were keen for their children to go abroad and were sending them younger and younger, to obtain remittances to keep the country going. Families were complicit in the trafficking, or turned a blind eye, convincing themselves it was not the case, often coupled with financial compensation for the parents. Threats and violence were used on to force the boys to grow cannabis, even if they were groomed rather than kidnapped into the criminal enterprise.

76. Professor Haxhiymeri explained in her January 2019 interview that in some cases, internal trafficking was a test for later external trafficking:

“I have heard of cases that have been trafficked internally first and after that externally. So, in a way, they have been tested as to whether they are useful, and after that they have been trafficked externally.”

77. Albania has ratified the two optional protocols to the Convention on the Rights of the Child, which cover child trafficking, selling children, child sex work, pornography and other issues. In 2006, it also ratified the Council of Europe Convention on Action against Trafficking in Human Beings. The Asylos/ARC report sets out at length the legislative framework which has been provided in Albania to protect children. At 3.3, it considers the effectiveness of that legislation, which does not cover the trafficking of children within the borders of Albania, or forced labour. Caritas Albania agreed that the framework was in place, but in practice it was not enforced. Children were not recognised as being in a situation of being trafficked.

78. There was a low conviction rate on prosecutions for trafficking, although Albania was in the top five non-European Union countries for registered victims of trafficking. There were only 21 convictions in 2015 and 2 in the first half of 2016. The Council of Europe’s GRETA Report in 2016 criticised the prosecution rate as ‘rather low’, partly due to the non-recognition of children as victims of trafficking. Most of the prosecutions concerned adult victims of trafficking, not children.

79. An anonymous source, interviewed in 2019 for the Asylos/ARC report said that in Albania there was complete denial that boys and young men are trafficked:

“There is almost complete denial about the possibility that boys and young men are being trafficked into things like labour exploitation and forced criminality. There really is a deeply held denial that these things are happening and a belief that young men are making it up or that people are doing it willingly-a different viewpoint on young adulthood.

Predominantly absolutely denial that it even exists as a phenomenon and the belief that young men are falsifying this information while migrating for economic reasons and a belief that this is always facilitated by their family. So I would say that that very clearly creates a culture-if something doesn’t exist according to those who are supposed to be identifying it then it’s going to continue with impunity.”

80. Dr Haxhiymeri said that none of the young men she worked with had ever gone through the prosecution process: the police do not prosecute. Although an NRM mechanism existed in Albania, police often associated trafficking with movement and were unlikely to identify as trafficked victims recruited and exploited in the same region of Albania. Shelters existed for child victims of trafficking, but the preferred approach was to take the child back to their family and support the family, or to place the children in orphanages.
81. A 2017 research paper by Dr Tahiraj, quoted in the Asylos/ARC report said that family was the fundamental source of personal, financial and social security in Albania, and lack of family support therefore put returnees at risk of severe poverty, leading to re-trafficking. Public health services were inadequate and available only for severe psychological problems, with psychotherapy only available in the private sector. The public health sector was not easy to access, particularly away from a person's home region.
82. Repatriated young male victims of trafficking would experience significant difficulties, since extensive family support was unlikely to be available, because they had brought shame on the family.
83. Most boys needed an identity card and other basic documents. Sometimes, they needed legal help to ensure non-punishment for the crimes their exploiters forced them to commit. Those with poor education, self-care or life skills, from having been in a street situation, fared worse. An anonymous source interviewed in December 2018 and January 2019 said that Tirana, the capital, had better support, with free medical care, housing and other local programs to support their reintegration, and more job opportunities. Dr Haxhiymeri and Dr Schwandner-Sievers disagreed, saying that there was no distinction between Tirana and the rest of the country, and that many families survived in Albania only because of remittances from abroad.
84. Mr Simmonds-Read said that the ability to return to family members in Albania could be either protective, or a risk factor, depending on the original family circumstances. Individuals could be found anywhere in Albania, if the gangs were interested in doing so. Other contributors thought the same, but there is no extant research on re-trafficking of boys and young men.

Home Office Fact-Finding Mission and CPIN [2017]

85. There is a dearth of recent investigation by the Home Office of the trafficking of Albanian boys and young men. The July 2017 Home Office CPIN does not deal in detail with the position of boys and young men. It does state that transfer of civil registration to a new community of residence requires documentation to demonstrate that a person is legally domiciled in Albania.
86. The CPIN asserts that most persons fearing non-state or 'rogue' state actors could exercise an internal relocation option to another part of Albania, which would normally be reasonable, depending on the nature and origin of the threat, and the person's personal circumstances.

87. In late 2017, the Home Office sent a Fact-Finding Mission to Albania in 2017, whose findings were published in 2018. During a meeting with Dr Rifat Demalija, programme manager of the Centre for Youth Progress NGO in Kùkes, and a civil society activist, she is recorded as saying that there was a high rate of unemployment in the Kùkes region.
88. Dr Demalija said that trafficking of young women and girls, and boys under 18, was one of the most serious issues in the region. Prosecution rates were low and domestic violence a problem. Remittances were not sent back from the United Kingdom much any longer: the children used to but now 'they do not know or do not care', or perhaps they were not working. The Director of Social Services of the Municipality of Tirana, when interviewed in November 2017, said that they sometimes received referrals for boys, as well as girls, and had a separate free counselling telephone line for boys.
89. There is no other mention in the Fact-Finding Mission report of the position of boys and young men as victims of trafficking.

Definition of human trafficking

90. The Secretary of State accepted in *MS (Pakistan) v Secretary of State for the Home Department* [2020] UKSC 9 that her guidance to caseworkers and the NRM procedure where she is the sole Competent Authority, must comply with the definition of human trafficking at Article 4 of the Council of Europe Convention on Action against Trafficking in Human Beings [2012] (ECAT), although ECAT has not been formally incorporated into United Kingdom law.
91. Article 4 defines 'trafficking in human beings' at Article 4(a) and definitions at Article 4(b) -4(e) are also relevant:

"ARTICLE 4 - Definitions

For the purposes of this Convention:

(a) "Trafficking in human beings" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation shall include, at a minimum, ... forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) *The consent of a victim of "trafficking in human beings" to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;*

(c) *The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in human beings" even if this does not involve any of the means set forth in subparagraph (a) of this article;*

- (d) "Child" shall mean any person under eighteen years of age;
- (e) "Victim" shall mean any natural person who is subject to trafficking in human beings as defined in this article." [*Emphasis added*]

Modern Slavery Act 2015

92. Section 2 of the Modern Slavery Act 2015 now defines the criminal offence of human trafficking:

"2. Human trafficking

- (1) A person commits an offence if the person arranges or facilitates the travel of another person ("V") with a view to V being exploited.
- (2) It is irrelevant whether V consents to the travel (whether V is an adult or a child).
- (3) A person may in particular arrange or facilitate V's travel by recruiting V, transporting or transferring V, harbouring or receiving V, or transferring or exchanging control over V.
- (4) A person arranges or facilitates V's travel with a view to V being exploited only if –
- (a) the person intends to exploit V (in any part of the world) during or after the travel, or
 - (b) the person knows or ought to know that another person is likely to exploit V (in any part of the world) during or after the travel."

93. The definition of 'exploitation', where the person is a minor, is to be found in section 3 of the Act:

"3. Meaning of exploitation

- (1) For the purposes of section 2 a person is exploited only if one or more of the following subsections apply in relation to the person. ...

Securing services etc from children and vulnerable persons

- (6) Another person uses or attempts to use the person for a purpose within paragraph (a), (b) or (c) of subsection (5), having chosen him or her for that purpose on the grounds that -
- (a) he or she is a child, ..., and
 - (b) an adult ... would be likely to refuse to be used for that purpose."

MS (Pakistan)

94. The United Kingdom is party to both the 2000 Palermo Protocol (the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime) and the 2005 Council of Europe Convention on Action against Trafficking in Human Beings ("ECAT").

95. In *MS*, at [15] in the judgment of Lady Hale, President of the Supreme Court, with whom Lord Kerr JSC, Lady Black JSC, Lord Lloyd-Jones JSC and Lord Briggs JSC agreed, the Supreme Court held that the 'essentially factual' question of whether a person had been trafficked was one in which the First-tier Tribunal and the Upper Tribunal were better placed than was the Competent Authority to decide whether a person had been trafficked.
96. The Upper Tribunal is not bound by a negative Conclusive Grounds decision by the Competent Authority, which will have been made to the higher standard of balance of probabilities, but must determine for itself whether an appellant is a victim of trafficking before going on to decide whether that creates a risk on return, on the facts of the appeal.

Submissions

Appellant's submissions

97. In submissions for the appellant, Ms Jones relied on her skeleton argument of 8 October 2020. She submitted that the appellant was a credible witness and that the problem of proof was compounded in the case of children as noted in the 1994 UNHCR Guidelines on Protection and Care. The appellant's account was both internally plausible and externally consistent with what she described as a plethora of available objective evidence that children in Albania are exploited and subjected to forced labour, and the ARC Foundation Report.
98. The appellant's father was a handyman and his mother a housewife. The family needed money and he had been sent out to work, and to help support the family, when he was only 11. He was currently in poor mental health being stressed, depressed and sad, which would affect his ability to cope on return to Albania. The Upper Tribunal in *AM and BM* held that not all victims of trafficking might be able to exercise an internal relocation option.
99. The appellant would rely on the Home Office CPIN of July 2017, the Report of the Fact-Finding Mission to Albania in 2017, and on *TD and AD (Trafficked women)* CG [2016] UKUT 00092 (IAC) as to re-trafficking risks. Trafficking remained a serious issue. Dr Tahiraj's report corroborated the appellant's account and also assisted the Tribunal in relation to sufficiency of protection.
100. In her written closing submissions, Ms Jones argued that there was a marked gap in authoritative findings about trafficking of male victims, and an absence of Home Office policy recognising male victims of trafficking in Albania as a particular social group. The appellant's account in cross-examination was consistent with his account throughout and supportive of his credibility overall, as well as being consistent with all the country evidence.
101. The appellant's evidence about his inability to send money home from the 'tomato farm' work was supportive of his account of being compelled to work, rather than simply employed. The involvement of a doctor to repair his damaged tendons did

not indicate that the two men had any personal care for him: it was likely that they wanted him to keep working and making money for them.

102. Dr Tahiraj's evidence was that individuals who outed crime networks were at risk of retaliation: the refusal letter failed to take account of the local and country context. In Albania, there was a failure to recognise the trafficking of young men as an issue at all.
103. The legislative framework had major difficulties with implementation and there was corruption within the police force and government bodies. Fear of self-incrimination, and collusion by local police with criminal gangs reduced the effectiveness of domestic protection. In reality, the appellant would not be able to access judicial remedies, nor would there be a sufficiency of protection for him from the Albanian authorities.
104. The appellant's English language and bricklaying skills would be of little advantage to him in Albania as he had no support network there.
105. As to internal relocation, the evidence of Ms Schwandner Sievers in the ARC Foundation report was that it was impossible to live anonymously anywhere in Albania, for cultural reasons, because it was such a small country. Dr Tahiraj made the same point. Although the appellant had an identity card now, he would have to go to his local municipality office to apply to change residence.
106. Overall, returning the appellant to Albania would breach his Article 2 and 3 ECHR rights as well as the United Kingdom's international obligations under the Refugee Convention and in default, in European Union law (humanitarian protection).
107. As regards Article 8 ECHR, even excluding consideration of his marriage, the appellant had demonstrated very significant obstacles to his reintegration in Albania, and he had submitted numerous letters confirming his private life and his friendships here.
108. Ms Jones asked the Tribunal to substitute a decision allowing the appeal.

Respondent's submissions

109. For the respondent, Ms Isherwood submitted that the appellant's account lacked credibility. Ms Isherwood relied on section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and argued that the appellant's admitted failure to claim asylum in Italy or France further damaged his credibility. Ms Isherwood argued that even if the Tribunal accepted that the appellant's account had been consistent, applying *TK (Burundi) v Secretary of State for the Home Department* [2009] EWCA Civ 40 and *Y & Anor (Sri Lanka) v Secretary of State for the Home Department* [2009] EWCA Civ 362, the Upper Tribunal should not suspend disbelief and believe everything he said.
110. Ms Isherwood relied on the NRM decision in August 2016 and the discrepancies therein identified, although she accepted that, applying *DC (Trafficking protection/human rights appeals) Albania* [2019] UKUT 00351 (IAC) at [34]-[35], the

Upper Tribunal was entitled to make its own assessment of the credibility of the appellant's account, to the lower standard of proof applicable in international protection appeals.

111. Ms Isherwood disputed Dr Tahiraj's assessment that the appellant's account was plausible. Dr Tahiraj's evidence was that boys in the appellant's position worked without pay, but the appellant had accepted payment, which he was able to pass on to his family members on his return. The appellant worked long shifts but had time to himself in between and some unspecified amenities. The medical attention for the appellant's cut finger also indicated that the appellant was an employee, not a forced worker. He was able to keep in contact with his family, albeit not frequently. There was no suggestion that his family had asked him to send money home to assist with their financial difficulties.
112. It was not credible that just two traffickers would be able to control a gang of 10 boys for so long, especially as they were not always there. As the two gang members came and went, the appellant would have had numerous opportunities for escape in the two years he worked on the cannabis farm. When the appellant did leave, he left with all the other workers and was able to take his new passport, which the gang had helped him obtain. It was unlikely that a trafficked child would have control of his passport.
113. There was no detail or corroboration of the claimed abuse by his family members. The appellant had returned home, and had no difficulty while staying with his parents before he left for Italy. The passport which he obtained would have required parental consent.
114. The appellant's account of his reasons for staying in the United Kingdom focused on education, not on fear. His evidence was that he had no wish to contact any family members in Albania. There was no medical evidence to support the appellant's claim to have depression or any other health consequence of the alleged mistreatment in Albania. The appellant had been legally represented throughout, but his witness statement only addressed the difference in dates for the 2-year period he spent with the cannabis growing gang. He had not addressed the other matters which concerned the Secretary of State as Competent Authority in her refusal letter.
115. The appellant had not been trafficked out of Albania to Italy by his father. The account of his departure, and of his safe residence with his family, or another family member, for about two months preceding his departure, was sparse and should be given little weight. Dr Tahiraj's report was inadequately sourced and should not be treated as reliable.
116. In the alternative, even if the appellant's evidence were credible, the Albanian government was increasing its efforts to support former victims of trafficking on return. Ms Isherwood relied on *TD and AD (trafficked women) Albania CG* [2016] UKUT 92 (IAC). The appellant was a healthy young man who had acquired some additional skills in the United Kingdom and Dr Tahiraj accepted that there was some limited welfare and housing support available in Albania.

117. The respondent would rely on the 2019 US State Department Report *Trafficking in Persons: Albania* as to the work of the Anti-Trafficking Unit in Albania, although it stated that '[The] government of Albania does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so'.
118. There were victim protection efforts, increased training for the police, and data confidentiality, as well as state-run shelters and NGO shelters with police or private security protection. That was supported by the ARC report *Albania - Trafficked Boys and Young Men*. The CPIN on Albanian People Trafficking confirmed that there were support mechanisms to assist those at risk of re-trafficking.
119. The appellant had travelled to Italy on his own genuine Albanian passport and was able to renew it at the Albanian Embassy in London. The appellant did not fear approaching the Albanian authorities: he had been able to approach the Albanian Embassy for documents, to facilitate his recent marriage. As an adult, the appellant was entitled to an Albanian National Identity Card, and the Embassy had issued him with one, as well as renewing his passport.
120. With these documents, the appellant would be able to register in another town and obtain services. On return, the appellant could reach out to his family in Albania for help, despite the break in contact with them since 2015. There was a welfare system in Albania, if the appellant was unable to find employment on return.
121. As to the risk of re-trafficking, the respondent argued that it was for the appellant to approach the authorities for protection. He was an adult who had benefited from education and skills acquired in the United Kingdom and Albania had appropriate support mechanisms to enable him to reintegrate, despite his youth and his claimed, but unproven, mental health issues. There were no significant obstacles to reintegration.
122. Nor, in human rights terms, were there insurmountable obstacles to return, on the facts of this appeal. The letters of support and character references reflected the efforts he had made to obtain qualifications in the United Kingdom, and that the appellant was motivated and hard working. His friendships could continue after his return to Albania.
123. Ms Isherwood asked that the decision in this appeal be remade by dismissing the appellant's appeal on all grounds.

Analysis

124. Four questions need to be answered:
- (1) is the appellant's account credible, or how much of it is credible;
 - (2) does that account establish a well-founded fear of persecution in his home area if returned today, taking account of the sufficiency of domestic protection in Albania;
 - (3) is there an internal relocation option within Albania; and

- (4) If none of the above are applicable, should the appellant be granted leave to remain on Article 8 ECHR grounds, within or outwith the Immigration Rules.

125. I have heard the appellant give evidence, and examined the country evidence. I have regard to section 8 of the 2004 Act, but remind myself that in *SM* (Section 8: Judge's process) Iran [2005] UKAIT 00116, the Asylum and Immigration Tribunal held that:

"Even where section 8 applies, an Immigration Judge should look at the evidence as a whole and decide which parts are more important and which less. Section 8 does not require the behaviour to which it applies to be treated as the starting-point of the assessment of credibility."

126. Both during the hearing, and in assessing credibility, I have had regard to the appellant's youth and vulnerability at all material times, and to the lower standard of proof applicable in international protection claims. The appellant's account of his history in Albania is entirely consistent with the country evidence before me. The minor discrepancies relied upon by the respondent, having regard to the appellant's young age on arrival and his extremely limited education in Albania, are not such as to render his account one that lacks credibility. I therefore treat the appellant as a credible witness.

127. The appellant comes from a poor family. He was forced to leave school when he was 11, with just 6 years' schooling, and required, illegally under Albanian law, to help his family earn its living by selling small items on the street and in a market. That is typical of the circumstances of trafficked boys and young men in Albania. The appellant was then recruited by the cannabis growers, and went to work for them with his parents' approval. Over 2 years, he accumulated a substantial sum, which he was able to give to his mother after he returned. He was then escorted by his father to Italy, on a valid passport obtained by the traffickers, and travelled on to the United Kingdom.

128. The appellant's parents, when sending him out to sell small things on the street at the age of 11, arguably themselves trafficked him. They were aware of the offer for him to go and work, against Albanian law, in shepherding or 'tomato farming' and they accepted the proceeds of his work when he returned. That involved both providing benefits and services for another person. If the appellant's account is credible, which I find it to be, then the definition of human trafficking is met, both for his parents and certainly for the two gang members.

129. The next question is whether the appellant's account establishes a well-founded fear of persecution if he is returned now. The appellant accepts that his humanitarian protection and Article 2/3 ECHR claims stand or fall with the asylum claim. The appellant has established that he was a trafficked person in Albania, and perhaps also in the journey to Italy. I remind myself that re-trafficking is a reality in Albania.

130. The appellant's evidence, which I accept, is that he does not know whether the traffickers remain interested in him: he is no longer in contact with his family members. If returned, he would have to register his change of area with his home area, whether by going there, or by taking some other action in the area of internal

relocation. Albania is a very small country and if the traffickers wanted to find him, they would be able to do so, given the levels of corruption which exist in the police and other official bodies. I accept that as consistent with the country evidence about internal relocation.

131. As regards state protection, while the Albanian authorities are willing, and have made some progress, the country evidence does not indicate that the standard of protection available now is sufficient to protect this appellant from re-trafficking, or from being found by the previous traffickers, should they still have an interest in him
132. I note that the two areas where the appellant lived and worked were Domje, a suburb of Tirana, the capital city of Albania, and Fushë Lurë, about 4 hours' drive to the north-east. The respondent has not suggested any area of Albania where the appellant could relocate in safety, given the small size, and tribal or familial structure of Albania. I reject Ms Isherwood's assertion that internal relocation is an option.
133. I am satisfied that there would be significant obstacles to reintegration in Albania for this young man. He has cut his ties with his family members there, who he assesses as having 'always used him' and he will not have the family resources to enable him to obtain employment and housing in an area of internal relocation.
134. I therefore allow the appeal on asylum grounds. Humanitarian protection is not reached. The question of Article 8 ECHR protection is also not reached: had it been reached, I would have noted that the appellant had demonstrated that he had put all of his energies into study and that, leaving his recent relationship out of consideration because that is a 'new matter', his private life would not have been sufficient to enable leave to remain to be granted on Article 8 ECHR grounds outside the Rules.

DECISION

135. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by allowing the appeal on asylum grounds.

Signed *Judith AJC Gleeson*
Upper Tribunal Judge Gleeson

Date: 17 November 2020