



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/02368/2019

**THE IMMIGRATION ACTS**

Heard at George House, Edinburgh  
On 20 October 2021

Decision & Reasons Promulgated  
On 25 November 2021

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MS FK  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr E MacKay, Solicitor, MacKay

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals against a decision of the Secretary of State made on 27 February 2019. Her appeal against that decision was dismissed by the First-tier Tribunal for the reasons given in its decision handed down on 16 September 2019. Permission to appeal against that decision was granted on 23 October 2019 but was dismissed by the First-tier Tribunal for the reasons given in its decision of 10 September 2019. That decision was set aside for the reasons given in my decision promulgated on 21 February 2020. A copy of that decision is attached to this decision; it also set out the reasons for the granting of anonymity in this appeal.

**The Appellant's Case**

2. The appellant is a citizen of Albania. She has two brothers and an older sister but was compelled to leave school after only completing her primary education. She was ill-treated by her father who blamed her for not being married until the age of 23 and

she was pressured into marrying her husband. He was violent towards her and was also violent towards her mother.

3. The appellant's husband was initially controlling but did not physically assault her although he had verbally abused her, until they moved to Belgium in December 2011. He was violent to her there, beating her badly which left her with bruises. She was afraid of reporting this to the police fearing that he had would be arrested and once released he would take revenge on her family. It was only in Belgium and after they had applied for asylum that she found out from her husband's sister that he involved in a blood feud. It was whilst she was in Belgium that she gave birth to her daughter, and it was only on 2 February 2013 that she left Belgium without her husband, being able to flee him only when he had taken their daughter to buy milk nearby. On 1 February 2013 her husband had taken their daughter to buy and milk and never returned, calling her to say that Ardin Drabej was chasing him and she had not heard anything about him since. She then fled Belgium via Eurostar to the United Kingdom.
4. The appellant has had no contact with her husband since the beginning of 2004 when, through phoning her sister in Albania, she found out he had left her in Belgium deliberately. She did speak to him by telephone but he said if he she were there he would throw her from the seventh floor of the building; but he had told her father that he had left the daughter in the street and her father ordered her and the son she has since had who was born in the United Kingdom in August 2013 to go back to Albania.
5. Since arriving in the United Kingdom the appellant has moved to Glasgow. Whilst there she became the victim of trafficking and was subject to significant abuse sexual abuse. That aspect of her claim formed the basis of a trafficking claim and it was accepted on the balance of probabilities under the National Referral Mechanism that this had occurred.
6. The appellant is unclear whether her husband has formally divorced her but he has formed a new relationship and retains custody of their daughter. Her father has disowned her and her mother is now unwell. She has, however, been able to speak to her mother via telephone. Her mother is able to see the daughter on occasion.
7. The appellant has been in receipt of support from Glasgow City Council and also psychiatric support and suffers from a number of problems, receiving counselling because of what she had suffered both in Albania, Belgium and in Scotland. She has been diagnosed as suffering from depression, post-traumatic stress disorder of a complex nature, experiences some suicidal ideation.

### **The Respondent's Case**

8. The respondent's case is set out in the refusal letter of February 2019. In summary, although accepting the appellant had been trafficked and was the victim of domestic violence, it was not accepted that there was a blood feud or that she was at risk from it. It was considered also that there would be a sufficiency of protection for her in

Albania should she be at risk from her husband or her father; and, that she would be able to relocate to another town where she would not be at risk and where support services could be provided to her.

### **The Hearing**

9. I had before me three bundles of documents providing the following:-
  - (1) The respondent's bundle.
  - (2) Three inventories of production from the appellant.
  - (3) Country Policy and Information Note Albania: Human trafficking September 2021
  - (4) Country Policy and Information Note Albania: Mental healthcare May 2020
  - (5) Country Policy and Information Note Albania: Domestic abuse and violence against women December 2018
  - (6) Supplementary bundle.
10. It is unfortunate that there has been such a delay in the appeal being heard subsequent to my decision setting aside the First-tier Tribunal's error of law. That is because of the current epidemic, it not being suitable for this case to be heard remotely given the appellant's circumstances as a vulnerable witness.
11. As a preliminary matter I raised the fact that the appellant's son was born in the United Kingdom and was now 8 years of age. It was accepted that this was a new matter and consent was given to this being considered for the purposes of Section 85 of the 2002 Act.
12. The appellant gave evidence in English, adopting her witness statement. In cross-examination, she said that her son speaks only English although he does understand Albanian. She said that he speaks a few words and that he thinks he is Scottish. He did not know much about Albania. The appellant said that her son does know he has a sister in Albania and does ask why she is not there. She said it is very difficult to explain to him at his age why that is so. She said that he maybe once had spoken to his grandmother on the telephone but he is usually at school when she calls. She said that her mother did not have the facility for Skype or other face video calling on her telephone. In response to my questions the appellant said that her son had asked about Albania, her mother and his family and wanted to know why he had not seen them.
13. Mr Diwnycz sought to rely on the refusal letter and also the two CPIN Reports. He said he would not rely on specific passages but submitted that there was evidence that the medication the appellant receives is available. He accepted that matters had moved on in the sense that the child is now over 8 years old.

14. Mr MacKay submitted that this is a novel case in that the trafficking took place within the United Kingdom but that the appellant would be going back to Albania as a victim of trafficking with all the attendant mental health difficulties, fear of her husband and PTSD. She would face the risk of many similar factors, that is that she would be seen as unclean, in a patriarchal society. He submitted that she would be at risk in her home area from her father and brothers, as set out in the evidence of the mother, and also from her husband. He submitted that as a single woman with significant mental ill health problems, including suicidal ideation, and as a single mother she would not have the means to cope in looking after her son. He submitted that given there are factors that this appellant faces including lack of education, lack of work prospects, mental health problems and her difficulty in accessing any support that there would not be a sufficiency of protection for her, nor would it be reasonable to expect her to relocate within Albania.
15. I indicated at the end of the hearing that I would allow the appeal for reasons to be given in writing which I now do.

### The Law

16. It is for the appellant to prove, on the lower standard, that she is at risk on return to Albania of serious harm such as would constitute persecution, entitle her to humanitarian protection or engage article 3 of the Human Rights Convention.
17. The appellant's fear in this case is of non-state agents. As was noted in AW (Sufficiency of Protection) Pakistan [2011] UKUT 31, in Bagdanavicius the House of Lords at [2005] UKHL 38 left undisturbed the proposition set out by Auld LJ on real risk and sufficiency of protection in the Court of Appeal [2005] EWCA Civ 1605. These propositions are in the following terms:

"54. Summary of conclusions on real risk/sufficiency of state protection.

*The common threshold of risk*

1) The threshold of risk is the same in both categories of claim; the main reason for introducing section 65 to the 1999 Act was not to provide an alternative, lower threshold of risk and/or a higher level of protection against such risk through the medium of human rights claims, but to widen the reach of protection regardless of the motive giving rise to the persecution.

*Asylum claims*

2) An asylum seeker who claims to be in fear of persecution is entitled to asylum if he can show a well-founded fear of persecution for a Refugee Convention reason and that there would be insufficiency of state protection to meet it; Horvath [2001] 1 AC 489].

3) Fear of persecution is well-founded if there is a 'reasonable degree of likelihood' that it will materialise; R v SSHD ex p. Sivakumaran [1988] AC 956, per Lord Goff at 1000F-G.

4) Sufficiency of state protection, whether from state agents or non-state actors, means a willingness and ability on the part of the receiving state to provide through its legal system a reasonable level of protection from ill-treatment of which the claimant for asylum has a well-founded fear; Osman v UK [1999] 1 FLR 193], Horvath, Dhima [2002] EWHC 80 (Admin), [2002] Immigration Judge AR 394].

5) The effectiveness of the system provided is to be judged normally by its systemic ability to deter and/or to prevent the form of persecution of which there is a risk, not just punishment of it after the event; Horvath; Banomova [2001] EWCA Civ.807. McPherson [2001] EWCA Civ 1955 and Kinuthia [2001] EWCA Civ 2100.

6) Notwithstanding systemic sufficiency of state protection in the receiving state a claimant may still have a well-founded fear of persecution if he can show that its authorities know or ought to know of circumstances particular to his case giving rise to his fear, but are unlikely to provide the additional protection his particular circumstances reasonably require; Osman.

#### Article 3 claims

7) The same principles apply to claims in removal cases of risk of exposure to Article 3 ill-treatment in the receiving state, and are, in general, unaffected by the approach of the Strasbourg Court in Soering; which, on its facts, was, not only a state-agency case at the highest institutional level, but also an unusual and exceptional case on its facts; Dhima, Krepel [2002] EWCA Civ 1265 and Ullah [2004] UKHL 26.

8) The basis of an article 3 entitlement in a removal case is that the claimant, if sent to the country in question, would be at risk there of Article 3 ill-treatment.

9) In most, if not all, Article 3 cases in this context the concept of risk has the same or closely similar meaning to that in the Refugee Convention of a 'well-founded fear of persecution', save that it is confined to a risk of Article 3 forms of ill-treatment and is not restricted to conduct with any particular motivation or by reference to the conduct of the claimant; Dhima, Krepel, Chahal v UK [1996] 23 EHRR 413.

10) The threshold of risk required to engage Article 3 depends on the circumstances of each case, including the magnitude of the risk, the nature and severity of the ill-treatment risked and whether the risk emanates from a state agency or non-state actor; Horvath.

11) In most, but not necessarily all, cases of ill-treatment which, but for state protection, would engage Article 3, a risk of such ill-treatment will be more readily established in state-agency cases than in non-state actor cases – there is a spectrum of circumstances giving rise to such risk spanning the two categories, ranging from breach of a duty by the state of a negative duty not to inflict Article 3 ill-treatment to a breach of a duty to take positive protective action against such ill-treatment by non-state actors; Svazas.

12) An assessment to the threshold of risk appropriate in the circumstances to engage Article 3 necessarily involves an assessment of the sufficiency of state protection to meet the threat of which there is such a risk – one cannot be considered without the

other whether or not the exercise is regarded as ‘holistic’ or to be conducted in two stages; Dhima, Krepel, Svazas [2002] EWCA Civ 74.

13) Sufficiency of state protection is not a guarantee of protection from Article 3 ill-treatment any more than it is a guarantee of protection from an otherwise well-founded fear of persecution in asylum cases – nor, if and to the extent that there is any difference, is it eradication or removal of risk of exposure to Article 3 ill-treatment’; Dhima, McPherson; Krepel.

14) Where the risk falls to be judged by the sufficiency of state protection, that sufficiency is judged, not according to whether it would eradicate the real risk of the relevant harm, but according to whether it is a reasonable provision in the circumstances; Osman.

15) Notwithstanding such systemic sufficiency of state protection in the receiving state, a claimant may still be able to establish an Article 3 claim if he can show that the authorities there know or ought to know of particular circumstances likely to expose him to risk of Article 3 ill-treatment; Osman.

16) The approach is the same whether the receiving country is or is not a party to the ECHR, but, in determining whether it would be contrary to Article 3 to remove a person to that country, our courts should decide the factual issue as to risk as if ECHR standards apply there – and the same applies to the certification process under section 115(1) and/or (2) of the 2002 Act”.

18. While it will always be relevant to ask whether or not there is in general a sufficiency of protection in a country, the critical question will nevertheless remain in an asylum case as set out in the sixth proposition by Auld LJ and in an Article 3 case as set out in the fifteenth proposition. Thus I must look, notwithstanding a general sufficiency of protection in a country, to the individual circumstances of the appellant and ask the above questions.
19. In assessing the issue internal relocation, I have taken a holistic approach, following the principles set out in MB (Internal relocation - burden of proof) Albania [2019] UKUT 392 (IAC)
20. I assess the appellant’s credibility through the lens of the background material provided to me which includes the most recent CPIN Reports. In assessing credibility, I note the finding that she is a vulnerable individual who has been subject to a significant degree of abuse in the United Kingdom and, I accept, has been the subject of domestic violence by her husband. I drew no inferences from her lack of knowledge about the blood feud, if it exists, bearing in mind her evidence as to the circumstances in which she was told and it may of course not be the case that what she was told is the truth. That is not, however, to say that I accept that the blood feud took place, merely that I have considered that that is what the appellant was told at the time. I do not, however, consider the fact that she did not ask her husband is in the context of the other material relating to how she was ill-treated detracts from her credibility.

21. Further, I accept the explanations given by the appellant for not mentioning in her screening interview that she was at risk from her husband as a result of domestic violence. I do not consider this is properly construed as inconsistent and I accept her account of what occurred.
22. Having had regard to Section 8 of the 2004 Act, I note that the appellant travelled through Belgium and Italy to the United Kingdom. I accept that she was under the control of her husband and I am satisfied that in the circumstances she did not have a reasonable opportunity to make an asylum and human rights claim in Italy.
23. I accept the appellant's account of being threatened by her husband in 2014 and I accept also the evidence of her mother in the form of a witness statement given to the appellant's solicitors which has not been challenged either in submissions or during cross-examination of the appellant. I accept from this that the appellant's father physically and verbally abused the appellant when she was younger and that she has had to keep in contact with the appellant in secret. I accept also that she believes that the father would kill or at least attack the appellant, as indeed would her brothers given the shame that she has brought on the family.
24. I note that the appellant has been under the care of a psychiatrist and other adult mental health professionals for a number of years and that she has significant post-traumatic symptoms as a result of the trauma she suffered both in Glasgow and Albania; that she has nightmares in respect of what she experienced in Albania and also the rapes to which she was subjected since arriving in Glasgow. I consider that given that she has been under the care of mental health professionals that it is sensible to put reliance on the report of Dr Glenn dated 20 August 2021 as it sets out in some detail the appellant's past psychiatric history and current psychiatric symptoms.
25. It is of significance that the appellant avoids all men if possible as a result of her experience which has stopped her attending college to learn further English; she is afraid at times that her son has been kidnapped by her estranged husband who removed her infant daughter from her care by deception; that she experiences significant suicidal ideation; that she has post-traumatic stress disorder with moderate depressive symptoms. It is also reported that she has a great fear of return to Albania, particularly a fear of her husband and her own family finding out that she is there and forcing to her to return to the reported violence and psychological abuse of her marriage. She is also afraid of her son being removed from her care and she wishes that she could have care of her daughter but believes that the best chance is to stay in the United Kingdom where she will be free from the threats of her husband. She is also afraid of how society in Albania would view her as a woman who is single with a child and who had left (although she was in fact abandoned) her marriage. Dr Glenn is also concerned that the anxieties of what would happen to her would worsen her depressive symptoms and strengthen her suicidal thinking and being returned to the country where her abusers live would trigger a worsening of her post-traumatic stress symptoms. She concluded that:

“A worsening of her mental state would be likely to affect her ability to seek support whilst in Albania, and further, though she works very hard to shield her son from her mental health difficulties and fears here in the UK it is likely that her fearfulness will affect her ability to parent her child e.g. she has expressed great fears about accessing the school system in Albania with any sort of identification documents, believing this would lead to her presence in Albania getting back to her and her husband’s family, and her being returned to her husband. This is likely to mean that she avoids taking such steps. Depressive symptoms, sleeplessness and trauma symptoms can all interfere with daily functioning which would include parenting and should this patient’s symptoms worsen on return to Albania, which I think is highly likely, I would be concerned that her parenting would also be affected adversely despite her determination to mother to the best of her ability”.

26. Taking all of this into account and viewing the evidence as a whole, I found that the appellant is a credible witness. I accept her account of what happened in Albania and also accept the evidence that her father, brothers and if he were aware, her estranged husband maintain an interest in her. Having made these findings I now turn to the risk on the appellant on return. (Note to self - insert from PA/05087/2019).
27. Having made these findings, I turn now to the risk to the appellant on return. It is necessary to answer the following questions:-
- (1) From whom is the appellant at risk?
  - (2) Where is the appellant at risk?
  - (3) Is there a sufficiency of protection for her?
  - (4) Is there anywhere she could relocate within Albania where she would not be at risk?
28. In doing so, I have followed the guidance in TD and AD (Trafficked women) CG [2016] UKUT 92, noting in particular:
- (h) Trafficked women from Albania may well be members of a particular social group on that account alone. Whether they are at risk of persecution on account of such membership and whether they will be able to access sufficiency of protection from the authorities will depend upon their individual circumstances including but not limited to the following:
    - 1) The social status and economic standing of her family
    - 2) The level of education of the victim of trafficking or her family
    - 3) The victim of trafficking's state of health, particularly her mental health
    - 4) The presence of an illegitimate child



- 5) The area of origin
  - 6) Age
  - 7) What support network will be available.
29. I am satisfied that the appellant is at risk from her family and her estranged husband who I find is likely to wish to take his son back. I am satisfied that this risk would occur in her home area.
30. I accept the evidence also that the father maintains an active interest in finding her. Whether he would be able to do so is contingent on (a) him knowing that she had returned to Albania and (b) being able to trace her. That is of course if she had not returned to the local area. The continuing threat and interest in her is confirmed by the evidence from the appellant's mother. In the light of that evidence, I accept that the appellant's father continues to be a threat to her and maintains an interest in her as do her brothers, given the perception that she has brought shame on the family. Given how he has treated her in the past, I am satisfied also that he presents a threat to her of violence of sufficient severity to constitute persecution, serious harm and engage Article 3. I am satisfied also that she would be at risk of having her son taken from her by her husband, and that she would, as a result of her multiple vulnerabilities, not be in a position to resist this.
31. I am satisfied also, given the level of sustained interest, that the risk to the appellant would not just be in the local area but would extend to other parts of the country, were her family or husband to learn she had returned. That is something she would find difficult to avoid happening; she would be returning with a young boy and would have to avoid contact with family and friends lest that information reach him, aside from any difficulties arising from her having to register with a local authority, an issue to which I will return.
32. In assessing whether there is a sufficiency of protection for this appellant, the principal difficulty in assessing this case is that what the appellant has been subjected to goes beyond the paradigm of domestic violence, an issue to which for understandable reasons, much of the background material is directed. There is significant evidence in the CPIN "Albania: Domestic abuse and violence against women" that there has been increased reporting, training of police and other agencies. But the situation is different when it comes to violence perpetrated by those other than the husband.
33. Even though there is a functioning police service in Albania and a criminal justice system, it is not without its problem.
34. The CPIN set out at section 5.12 material on other forms of violence against women which is the primary concern in this case. The CPIN provides:

5.12.1The GREVIO report of November 2017 stated:

'[...] forced marriage, sexual harassment and sexual violence, have received little legislative and political attention. Available data regarding these other forms of violence against women -however limited -corroborate the need to address them comprehensively. Hence, more efforts are needed, notably in the areas of data collection, multi-agency co-operation, awareness-raising, education, training of professionals, general and specialist support services, as well as restraining or protection orders, to cover effectively all forms of violence against women and girls.'<sup>55</sup>

35. At 5.12.3 GREVIO further stated:

'As a reflection of the law's main focus on domestic violence, specific standards for the treatment and care of other forms of violence against women, such as sexual violence and forced abortions, are lacking. The absence in Albania of any sexual violence referral centres, be they in a hospital or other setting, leaves victims at risk of not receiving the appropriate medical care. Moreover, the restrictive regulations subjecting forensic examinations to a request by the law enforcement agency or prosecution office are at odds with the best practice requiring forensic examinations to be carried out without delay in case of sexual violence regardless of whether the matter will be reported to the authorities. GREVIO is further informed in this respect that, in part due to the low fee paid for carrying out forensic examinations, victims have at times been required to pay additional amounts in order to receive an examination.

36. Even were the appellant to return to live elsewhere in Albania, in order to get protection (and indeed to enter a shelter – see CPIN at 6.1.6) she would need to obtain a protection order. There are difficulties with those, even in the context of ordinary domestic violence in terms of their enforcement. Much of the material concerns victims of domestic violence from husbands and it is less clear how this appellant, given the lapse of time and apparent lack of physical evidence could obtain one. I am satisfied that on the material provided, that is unlikely given also that this case does not fit the paradigm of domestic violence.

37. Even assuming the appellant could enter a shelter, and would get assistance with her psychological problems, she would have a young son with her. The support from a shelter would be only temporary and reintegration would be difficult. Much of the material relates to Tirana and there would I accept be difficulties in her getting employment and accommodation, exacerbated by her having a young child, limited education and serious mental health problems. I consider that the stress of having to return to Albania where she has an understandable strong fear of being attacked and of losing her son as she lost her daughter is likely to exacerbate these problems.

38. Further, while TD and AD is not concerned directly with domestic violence, it is relevant on the issue of shelters, and on what happens after that time-limited protection. I am satisfied, having had regard to TD and AD in particular at [109], [111] to [112] and [119] that there is a real prospect of the appellant, given her mental ill-health and the unavailability of family support as the aunt is no longer able to help, and there would a significant risk were she to contact other relatives of her father finding out, that she would not be able to cope. I reach that conclusion noting that although she had been able to obtain employment, that was in different circumstances, and when she had no child.

39. Taking all of these factors into account, I am satisfied the appellant would be at risk of further ill-treatment of the same level of severity as before at the hands of her father and, were her husband to find out, at his hands. And that there would in her particular circumstances, given her multiple vulnerabilities cumulatively, not least of which is the difficulty she has in trusting men, be no sufficiency of protection for her that she could access. I accept also that she would be seen as having abandoned her husband and that there is a significant risk in her particularly vulnerable circumstances of her son being taken from her.
40. In light of all of the evidence I am not satisfied that there would be protection for her or that proper regard would be had to the particular circumstances where she has been threatened by her father and former husband such that she faces a real threat from them as in Osman. I also find that in her particular circumstances, again given her multiple vulnerabilities, mental ill health, lack of education, lack of family support and having an 8-year-old child effectively outside of marriage, that it would be unreasonable or unduly harsh to expect her to relocate within Albania. It is, however, less clear that she would be at risk of being trafficked although I accept that she is particularly vulnerable and likely to have little or no resources and support to fall back on. I am not, however, satisfied given the protective nature of having a child that there is at this stage a risk of suicide sufficiently serious to engage the test set out in J v SSHD.
41. I am not, however, satisfied that any risk to the appellant of ill-treatment at the hands of her family or husband is for a convention reason. It is personal to her, and not because of her being a member of a particular social group.
42. That leaves the question of whether any failure to protect her is on account of membership of a particular social group. In addressing that issue, I have followed Fornah [2006] UKHL 46 where Lord Bingham wrote [16]:

16 EU Council Directive 2004/83/EC of 29 April 2004, effective as of 10 October 2006, is directed to the setting of minimum standards among member states for the qualification and status of third country nationals or stateless persons as refugees, or as persons who otherwise need international protection, and setting minimum standards for the content of the protection granted. The recitals recognise the need for minimum standards and common criteria in the recognition of refugees, and for a common concept of "membership of a particular social group as a persecution ground". The Directive expressly permits member states to apply standards more favourable to the applicant than the minimum laid down. Article 10 provides (with Roman numerals added to the text):

"Reasons for persecution

I. Member States shall take the following elements into account when assessing the reasons for persecution ...

(d) a group shall be considered to form a particular social group where in particular:

[(i)] members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and

[(ii)] that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;

[(iii)] depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States: Gender related aspects might be considered, without by themselves alone creating a presumption for the applicability of this Article."

Read literally, this provision is in no way inconsistent with the trend of international authority. When assessing a claim based on membership of a particular social group national authorities should certainly take the matters listed into account. I do not doubt that a group should be considered to form a particular social group where, in particular, the criteria in sub-paragraphs (i) and (ii) are both satisfied. Sub-paragraph (iii) is not wholly clear to me, but appears in part to address a different aspect. If, however, this article were interpreted as meaning that a social group should only be recognised as a particular social group for purposes of the Convention if it satisfies the criteria in both of sub-paragraphs (i) and (ii), then in my opinion it propounds a test more stringent than is warranted by international authority. In its published *Comments* on this Directive (January 2005) the UNHCR adheres to its view that the criteria in sub-paragraphs (i) and (ii) should be treated as alternatives, providing for recognition of a particular social group where either criterion is met and not requiring that both be met. With regard to (iii), the UNHCR comments:

"With respect to the provision that '[g]ender related aspects might be considered, without by themselves alone creating a presumption for the applicability of the article,' UNHCR notes that courts and administrative bodies in a number of jurisdictions have found that women, for example, can constitute a particular social group within the meaning of Article 1A(2). Gender is a clear example of a social subset of persons who are defined by innate and immutable characteristics and who are frequently subject to differentiated treatment and standards. This does not mean that all women in the society qualify for refugee status. A claimant must demonstrate a well-founded fear of being persecuted based on her membership in the particular social group.

Even though less has been said in relation to the age dimension in the interpretation and application of international refugee law, the range of potential claims where age is a relevant factor is broad, including forcible or under-age recruitment into military service, (forced) child marriage, female genital mutilation, child trafficking, or child pornography or abuse. Some claims that are age-related may also include a gender element and compound the vulnerability of the claimant."

43. Despite Mr MacKay's submissions, I am not satisfied that woman in Albania form a particular social group per se or that I should depart from DM (Sufficiency of Protection – PSG – Women - Domestic Violence) Albania CG [2004] UKIAT 00059.

44. As was noted in TD and AD, trafficked women may well form a social group in Albania. The difference in this case is that the appellant was trafficked entirely within the United Kingdom. Nonetheless, it is how she will be perceived as a result of what happened to her, that is the issue, and I am satisfied that, on the particular facts of this case, she would be perceived to be part of a stigmatised group on account of having been so treated. That is something she could not conceal and would become known.
45. Accordingly, for these reasons, I am satisfied that the appellant has a well-founded fear of persecution in Albania on account of her membership of a particular social group, and I allow her appeal on that basis.
46. As I am satisfied that the appellant is a refugee, she is not eligible for humanitarian protection and so I must formally dismiss her appeal on that ground, with the caveat that had I not found that she was a member of a particular social group, I would have allowed her appeal on that basis.
47. I am satisfied that the appellant is at risk on return to Albania of ill-treatment of sufficient severity to engage article 3 of the Human Rights Convention and so I allow her appeal on that ground also.
48. It is in the circumstances, unnecessary to make any findings with respect to article 8. But, I would have allowed the appeal on article 8 grounds in any event, given that I am satisfied on the balance of probabilities that it would be unreasonable to expect the appellant's son to go to Albania, a country of which he knows little, where he does not speak the language, and where he would be at risk of being separated from his mother who is the only parent whom he knows. It follows, therefore, that requiring the appellant to leave her son here would be a breach of her article 8 rights.

### **Notice of Decision**

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. I remake the decision by:
  - (a) allowing the appeal on asylum grounds; but,
  - (b) dismissing the appeal on humanitarian protection grounds; and,
  - (c) allowing the appeal on human rights grounds.

Signed

Date 18 November 2021

*Jeremy K H Rintoul*  
Upper Tribunal Judge Rintoul



IAC-FH-LW-V1

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

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**Respondent**

**Representation:**

For the Appellant: Ms Crichton, solicitor

For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

3. The appellant appeals with permission against the decision of the First-tier Tribunal dismissing her protection and human rights appeals.

4. It is not in doubt that she is the victim of modern slavery within the United Kingdom given the findings of the competent authority. Having had regard to the Human Trafficking and Exploitation (Scotland) Act 2015 and the duties imposed by article 11 of the **Council of Europe Convention on Action against Trafficking in Human Beings** that it is appropriate to make an anonymity order in this case, given also that under section 2 (db) of the Sexual Offences Amendment Act 1992, a person who has made an allegation that he or she has been trafficked contrary to section 2 of the Modern Slavery Act 2015 is entitled to the same life-long anonymity as an alleged victim of a sexual offence.
5. The appellant in this case was trafficked, albeit unlike most other cases that occurred in the United Kingdom. That does, I accept, differentiate her position to some degree. Her case initially was that she was the wife of an individual who was at risk of a blood feud in Albania. The judge found that the appellant was not at risk of that, was not challenged, and that is perhaps unsurprising given that the husband has in fact, it appears, returned to Albania.
6. The judge's decision, rather than looking first at what it was he thought that the appellant said she feared on return to Albania, be that a subjective fear or objective fear, starts at paragraph 15 in his analysis of the decision TD and AD (Trafficked women) CG [2016] UKUT 92 (IAC). Where the judge appears to have started to err is that having noted rightly that the circumstances in this case are different, is that he failed properly to have regard to the reasons set out in TD and AD why a woman who had been trafficked in Albania is at risk, and that is because she faces being treated as "korva", that is a woman who has transgressed the social norms and is therefore shunned at best by her family if not actually persecuted. That may or may not apply to this appellant, given the acceptance on the balance of probabilities in the trafficking decision of what happened to her in Glasgow.
7. What the judge did not properly do is make findings as to what her situation would be on return to Albania with multiple complex PTSD, whether she would be at risk from her husband and with a small child and where they would be able to live. Whilst it is not necessarily the case that she will ultimately succeed in that, the judge has not made any proper findings on relevant issues as to a potential risk to the appellant and has focused rather on the conceptual basis of whether her position would engage the Refugee Convention or not rather than making proper findings of fact as to the risk and then assessing whether those risks engage the Convention. For these reasons I am satisfied that grounds 1 and 2 as characterised by Ms Crichton are made out.
8. I do not find that the judge erred with respect to Section 8 of the 2002 Act. The judge has not made any findings on that issue and it is not entirely clear that he has made any adverse credibility findings that would flow from Section 8, and indeed it is difficult to see what adverse findings the judge has in fact made, because although he rejects the appellant's claim to have been the victim of a particular blood feud, it is more in the terms of a finding that her subjective fear of that is not made out, not

least because of the fact that her husband has gone back to Albania, and so I do not find that ground 3 is made out.

9. The decision will need to be remade in terms of an assessment of what risks the appellant faces on return to Albania; and, whether that would engage the refugee convention.
10. Having reflected on the matter, I conclude that this matter is best retained in the Upper Tribunal.

**Notice of Decision**

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. The decision will be remade in the Upper Tribunal
3. **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 18 February 2020



Upper Tribunal Judge Rintoul