



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003379
First-tier Tribunal Nos:
PA/55377/2022
LP/00797/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 11 March 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

DK
(ANONYMITY ORDER MAINTAINED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Panagiotopoulou, Counsel; instructed by Virgo Solicitors
For the Respondent: Mr M Parvar, Senior Home Office Presenting Officer

Heard at Field House on 20th February 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the Appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. On 19 October 2023, I issued a Decision wherein I found that errors of law had been established in the decision of the First-tier Tribunal Judge promulgated on 10 July 2023, dismissing the Appellant's appeal against the Secretary of State's decision dated 28 June 2022 to refuse his protection and human rights claim made on 10 December 2018.
2. Accordingly, I set aside the decision and directed that the matter be relisted for re-making before any judge of this Tribunal. The error of law decision is appended hereto for ease of reference. By chance, this matter came before me once more.
3. I have before me a Composite Bundle ("CB") numbering 894 pages and an Appeal Skeleton Argument ("ASA") drafted by the Appellant's solicitors that was served before the First-tier Tribunal. No review was provided by the Respondent either below, or before the Upper Tribunal. The CB contains inter alia my Error of Law decision, the Appellant's and Respondent's Bundle before the First-tier Tribunal and the Appellant's Medical Records from his GP covering the period 5 September 2022 to 5 February 2024. Both parties agreed that the Bundles included all of the relevant subjective and objective evidence that I would need to refer to the relevant Home Office Country Policy Information Note for Albania concerning Human Trafficking, issued February 2023 ("CPIN").
4. Before turning to re-make the decision, I confirm the facts accepted by the Respondent which are thus not in dispute, as extracted directly from the Respondent's Refusal Letter of 11 November 2022, including a footnote reference to passages from the above-mentioned CPIN:
 - (a) **You were trafficked by criminals, forced to perform unpaid labour, and sexually abused. - Accepted.**
 32. You claim that you were trafficked by criminals, forced to perform unpaid labour, and sexually abused (WS 11 - 17).
 33. You have provided a sufficiently detailed, internally consistent, and plausible account of the relevant events (WS 11 - 17, AIR 53 - 139, & 169 - 179). Your account was also consistent with external evidence regarding trafficking in Albania¹. This is deemed to be of significant weight.
 34. Furthermore, it is noted that you have received a Conclusive Grounds Decision from the NRM Single Competent Authority (SCA), confirming that you are a victim of modern slavery (Home Office records). Such a decision is based on upon the balance of probabilities, a higher standard of proof than that required for material facts in asylum claims filed before 28/06/2022. This is deemed to be of significant weight.
 35. Consequently, it is considered reasonable to assess that there is a reasonable likelihood that you were trafficked by criminals, forced to perform unpaid labour, and sexually abused. Therefore, this material fact is accepted.
 - (b) **Section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004**

¹ ALB CPIN Trafficking (publishing.service.gov.uk), para. 2.3.3, 2.4.3, 3.1.1 - 3.1.3, & 3.4.4

36. Your behaviour has engaged section 8 subsection 4 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.

37. It is noted that you travelled to the UK via Slovenia, Italy, and Belgium, but you failed to claim asylum before arriving in the UK (WS 21 & 26). However, as it has been accepted that you were a minor when you claimed asylum in the United Kingdom, and as it is not considered reasonable to expect minors to claim asylum in each safe country that they enter on their journey, your credibility has not been damaged by your failure to claim asylum in these safe countries

5. Given the above, I indicated to the parties that I proposed to treat the Appellant as a vulnerable witness bearing in mind his age as a minor when the primary events occurred and given also that he was a minor when he claimed asylum and claims to suffer from stress, anxiety, flashbacks, sleeplessness and has been prescribed Sertraline 100mg daily. Consequently, I apply the Joint Presidential Guidance Note No.2 of 2010: Child, vulnerable adult and sensitive appellant guidance and bear in mind the guidance in JL (medical reports-credibility) China [2013] UKUT 00145 (IAC) at [14]-[15].

Legal Framework

6. To succeed on an asylum / protection claim, an appellant must show a well-founded fear of persecution for a Convention reason, namely race, religion, nationality, membership of a particular social group, political opinion. The burden of proof rests on an appellant. The lower standard of proof applies which can be expressed as a 'reasonable degree of likelihood' or 'a serious possibility' or 'sufficiently serious risk'. In respect of Article 3 ECHR, an appellant has to show that there are reasonable grounds for believing that he will be subjected to degrading or inhumane treatment.

Issues

7. The issues for me to determine are the same as those before the First-tier Tribunal which are itemised in the ASA as follows:
- (a) Whether the Appellant can form part of a Particular Social Group ("PSG")?
 - (b) Whether the Appellant will be at risk on return to Albania?
 - (c) Whether there is sufficient state protection available on return to Albania?
 - (d) Whether internal relocation is available? (N.B. Although not the subject of any finding by the Home Office decision-maker, I consider this ancillary issue for relevance and for the sake of completeness)

Evidence

8. I heard evidence from the Appellant, who was cross-examined by Mr Parvar, asked questions in clarification by me and re-examined by Ms Panagiotopoulou. I heard closing submissions from both parties following which I reserved my decision.

Findings

9. I record that I have taken the documentary evidence and oral evidence fully into account in reaching my decision but shall only set out the parts are relevant to

my findings upon the issues that I need to resolve as listed above. I am grateful to both representatives for their detailed submissions which I shall also set out only insofar as relevant to my analysis of the materials and consequent findings.

Factual Background

10. The undisputed factual background is as follows. The Appellant was born on the 24 March 2001 and is aged 22 years. His father was a prison officer and died of a heart attack in 2016. The Appellant lived with his mother and three sisters. A month after his father's death the Appellant was kidnapped and forced to work in a cannabis factory in Albania. Over a two year period he was forced to work in the cannabis factory, was sexually abused and forced to sell drugs. His mother took him to Belgium on the 6 November 2018 to escape such treatment. The Appellant made his own way to the United Kingdom arriving on the 18 November 2018. He claimed asylum on the 10 December 2018. The Respondent accepts that the Appellant was a victim of modern day slavery, forced to work in a cannabis factory and sexually abused and exploited in Albania.

(a) *Whether the Appellant can form part of a Particular Social Group (PSG)?*

11. In order to be recognised as a refugee, the Appellant needs to satisfy Article 1(A)(2) of the Refugee Convention which as originally approved reads as follows (so far as relevant):

"A. For the purposes of the present Convention, the term 'refugee' shall apply to any person who: ...

(2) ...owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country ..."

12. The Appellant claims to be a member of a Particular Social Group ("PSG") namely, a male victim of trafficking ("male VOT"). None of the other Convention reasons apply in this case.

13. Article 6 of European Union Directive 2004/83/EC ("the Qualification Directive") defines a PSG as follows:

"1. In deciding whether a person is a refugee...

(d) a group shall be considered to form a particular social group where, for example:

(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."

14. The Appellant submits that the two limbs under (d) are disjunctive. Mr Parvar did not seek to disagree with this or dissuade me from so finding. The present law under the Nationality and Borders Act 2022 ("NABA") clearly directs that a conjunctive approach is to be taken to the definition of a PSG (*cf.* sections 33(2) to 33(4)). However, given that the Refusal Letter precedes that legislation coming

into force, NABA does not apply to this appeal as the operation of those sub-sections is not retrospective.

15. In terms of former victims of trafficking constituting a PSG, I am mindful of the Tribunal's guidance in such cases as HD (Trafficked women) Nigeria CG [2016] UKUT 454 (IAC) ("HD"), HC & RC (Trafficked women) China CG [2009] UKAIT 00027 ("HC"), TD and AD (Trafficked women) CG [2016] UKUT 92 (IAC) ("TD and AD") and AZ (Trafficked women) Thailand CG [2010] UKUT 118 (IAC) ("AZ"). I was not taken to any of those cases by either party.
16. Turning to the above authorities, in HD, membership of a PSG made up of former victims of trafficking was conceded by the Respondent on the basis that "former victims of trafficking are seen as a distinct group within Nigerian society" ([9]). Likewise, in HC, the Respondent conceded that a person in that appellants position "could be" a member of a PSG.
17. In AZ, the Tribunal found that young women who were former victims of sexual exploitation did constitute a PSG because, adopting the words of Baroness Hale in R v Special Adjudicator ex parte Hoxha [2005] UKHL 19, "women who have been victims of sexual violence in the past are linked by an immutable characteristic which is at once independent of and the cause of their current ill-treatment".
18. In TD and AD, the Tribunal accepted that "Trafficked women from Albania may well be members of a particular social group on that account alone" ((h) of the headnote) but importantly went on to say that "whether they are at risk on account of such membership" would depend on their individual circumstances. It is worth noting however that the Tribunal's guidance in TD and AD in this regard stemmed from the Tribunal's previous guidance in AM and BM (Trafficked women) Albania CG [2010] UKUT 80 ("AM and BM"). The reasons why the Tribunal in AM and BM accepted that former female victims of trafficking in Albania constituted a PSG are to be found at [160] to [166] of the decision and are based squarely on the second limb of the definition, that is to say the societal perception of that group.
19. Thus, these authorities demonstrate that the PSG issue was conceded, or was resolved, based on societal perception of the group in the relevant country of origin.
20. In addition, subsequent to those decisions, the Tribunal promulgated the decision in DH (Particular Social Group: Mental Health) Afghanistan [2020] UKUT 223 (IAC) ("DH"), the headnote to which indicates that "the Geneva Convention relating to the Status of Refugees 1951 provides greater protection than the minimum standards imposed by a literal interpretation of the Qualification Directive and which therefore directs that "Article 10(d) [of the re-cast Qualification Directive] should be interpreted by replacing the word 'and' between Article 10(d)(i) and (ii) with the word 'or', creating an alternative rather than cumulative test". Thus, the case of DH suggests that the interpretation of a PSG is a disjunctive requirement that may be satisfied by the meeting of either Article 10(d)(i) or Article 10(d)(ii) of the Qualification Directive ("QD").
21. It is the Appellant's case that he must show "either an innate characteristic or that he is part of a group with a distinct identity in Albania". Conversely, it is the Respondent's position that male VOT are not a PSG as that is not the conclusion reached by this Tribunal in TD and AD.

Factual Context

22. Further to the undisputed facts set out above, I must first ascertain whether the Appellant is a member of a PSG. As noted above, the jurisprudence points to female victims of trafficking being conceded or resolved favourably as being a PSG based upon it being conceded or resolved that societal perception of the group in their country of origin would render them distinct, including female VOT in Albania. In addition, the CPIN states as follows at §§2.1.1 - 2.1.4, which echoes the Respondent's position in this appeal:
- 2.1.1 The UT, in the country guidance (CG) case of TD and AD (Trafficked women) CG [2016] UKUT 92 (IAC), heard 30 April, 6 May and 3 June 2015, promulgated 9 February 2016, which considered the position of female victims of trafficking only, observed that 'Trafficked women from Albania may well be members of a particular social group on that account alone' [119(h)].
- 2.1.2 Women who have been trafficked are likely to belong to a particular social group (PSG) within the meaning of the Refugee Convention. This is because they have an immutable characteristic - the experience of having been trafficked - and are likely to have a distinct identity within Albanian society because of prevailing attitudes towards women and victims of trafficking (see Prevalence and Treatment of victims of trafficking).
- 2.1.3 Men who are trafficked are not likely to form a PSG. Although they have an immutable characteristic - the experience of having been trafficked - they do not have a distinct identity within Albanian society (see Prevalence and Treatment of victims of trafficking).
- 2.1.4 Although a (female) victim of trafficking may belong to a PSG, such membership itself is not sufficient to be recognised as a refugee. The question to be addressed in each case is whether the person will face a real risk of persecution on account of their membership of such a group.
23. Given the positive Conclusive Grounds Decision from the NRM, and the acceptances in the Refusal Letter as to his being a trafficked male (notwithstanding his being subject to sexual exploitation and abuse), I accept that the Appellant is a male VOT, because he possesses an immutable characteristic, namely the experience of being trafficked. According to §2.1.3 of the CPIN and my own finding consistent with that view, the Appellant meets Article 10(d)(i) of the QD.
24. Applying DH, the Appellant is thus a member of a PSG. If DH is incorrect or I am wrong in applying it, I consider whether the Appellant can meet Article 10(d)(ii) of the QD.
25. I find that a male VOT has a "a distinct identity" in Albania, because they are perceived as being different by the surrounding society. I am led to this conclusion by references within the Asylös and ARC Foundation Report of May 2019 ("Asylös Report") which seeks to present "country-of-origin information (COI) on Albania specifically relating to trafficked boys and young men published between 1 January 2016 and 31 March 2019" and which aspires to "fill the gap in the COI literature about the situation of Albanian boys and young men who are victims of trafficking and to contribute to a more informed debate about the situation".

26. I note that the Asylos Report is mentioned, cited and relied upon in several significant instances in the CPIN and is also relied upon in the Refusal Letter. Consequently, I find that its content can, and should, be taken into account in assessing the position of a male VOT.
27. For example, §7.2.4 of the CPIN specifically quotes from page 16 of the Asylos Report which contains a January 2019 interview with Professor Haxhiymeri of the University of Tirana. Therein, Professor Haxhiymeri opines *inter alia* as follows:
- ‘... the same risk factors that have been identified for victims of trafficking regardless of gender apply to boys and young men. “There is no research in Albania about the profiles of trafficked boys and young men whereas we have done research on the profiles of trafficked girls and young women in this country. But the risk factors [of poverty, low education, suffering from physical or mental disabilities, domestic violence and/or sexual abuse within the family or a pre-existing blood feud, being LGBT and for children, being Roma or Egyptian or homeless] are also true for trafficked boys and young men in my opinion”’.
28. Consequently, the CPIN demonstrates awareness of objective in-country opinion which demonstrates that male VOTs and female VOTs have similar risk profiles. Consequently, I find that they will be perceived in a similar way given the only factor that differentiates them is their gender. Indeed, given the stigma attached to male VOT in Albania, which is evident from references in the Asylos Report (see pp.97-98 and 108 which include *inter alia* excerpts from “Different and Equal: Falling through the cracks! The trafficking of men and boys in Albania”, January 2015), a male VOT has, if anything, a more distinct identity than that of a female VOT given that there is a stigmatisation that male VOT face if their trafficking comes to light which would make them appear ‘weak’ and ‘powerless’ and thus face societal stigma.
29. Given that I have found that a male VOT is a PSG and the Appellant is a member of one, I turn to whether he is at risk on return.
- (b) Whether the Appellant will be at risk on return to Albania?*
30. 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. Having heard from the Appellant, I am satisfied that he is a witness of truth and I treat him as a credible witness. The appellant’s account of his history in Albania is entirely consistent with the country evidence before me. I am fortified in my view given that his account has been consistently accepted, first in receiving a positive Conclusive Grounds Decision from the NRM and then in the Respondent’s Refusal Letter. It is only the Appellant’s evidence in his most recent statement, raised post-decision in relation to risk on return that the Respondent does not accept and to which I direct my attention below in relevant part; whilst also remaining mindful of the appellant’s young age on arrival and that the matters alleged, even taken at their highest, do not go to the core of his account.
31. The Respondent’s stated position in his Refusal Letter is that the Appellant will not be at risk on return as “the Albanian authorities will be both willing and able to provide you with sufficient protection from these criminals”.
32. I start with the position in the CPIN at §§3.3.1 – 3.3.4 which in summary reflects that “(i)n general, the available evidence does not indicate that men and boys

who have been trafficked to the UK will be at risk of serious harm on return for that reason alone". The CPIN then goes on to advocate for an identical position to that taken by Professor Haxhiymeri, namely that "(w)hether they face a risk of such treatment will depend on their personal circumstances, such as their age, education, skills and employability, area of origin, health or disability, availability of a support network, and the intent and reach of their traffickers". Thus, to determine the risk the Appellant may face, I turn to consider his account and the risk factors identified at headnote (h) of TD and AD insofar as relevant.

33. In relation to the social status and economic standing of his family, I accept that the Appellant comes from a poor family. I note from the Asylos Report that the family background of trafficked boys tended to be abusive, neglectful or unsuitable for their needs, characterised by verbal and physical abuse. Whilst that is not the case here, a factor that is apparent is that one parent is dead. The Appellant's father was a former prison officer who passed away in 2016 which would have impacted upon the family income and is consistent with the Appellant's unvarnished account of having to move schools due to not being able to afford uniforms and books at school after his father's death. Additionally, the Appellant's family have always lived in rented accommodation, the mother is a dishwasher and even if two of the sisters are now in employment (one as a salesperson and one as a health assistant), I do not find that this will reduce the risk placed upon the Appellant on return in being the sole male in the household and the stigma and pressure put upon young males to provide for their family as confirmed in the CPIN and Asylos Report. This risk factor is established.
34. As to the level of education of the Appellant, albeit he attended school until the age of 17, any education he obtained was not a bar or disincentive to his becoming a male VOT, as the Respondent accepted. I therefore find that his having acquired a knowledge of English as a further step in education will not dissuade any traffickers from re-trafficking him given his accepted past as a VOT.
35. Concerning his state of health, I find that the Appellant is a vulnerable person as evidenced by, and as one would expect from, his being a male VOT, and further given his prescription for Sertraline which corroborates his account of anxiety and stress. Albeit there is no diagnosis that the Appellant can point to, given his status as a male VOT and his taking Sertraline, I accept that his mental health shows anxiety and stress which would prove to be a risk factor, as this is an added difficulty that male VOTs face given their reluctance to admit being VOTs on return, to avoid stigmatisation from society, but which reluctance and avoidance would lead to further likelihood of re-trafficking.
36. The Appellant's area of origin is the capital, Tirana, and given that it is proposed he could reintegrate to his family in Tirana, I find that this would place the Appellant at greater risk of re-trafficking given that he was originally kidnapped from his home area, and given that the Appellant has maintained throughout that the traffickers have pursued him until February 2023, albeit he does not know of their recent attempts as his mother is not sharing anything of this nature with him. I reject Mr Parvar's submission that, the fact that the traffickers ongoing interest in him and pursuit of his family being raised post-decision, is a fabrication. Rather, I find this evidence is a genuine attempt to address the issue of risk on return raised in the Refusal Letter and I also accept this part of the Appellant's account. In any event, I note that the Asylos Report suggests that traffickers are not limited to rural areas but also operate in the capital, as would appear to be the case here given that this is the Appellant's home area from

which he was kidnapped, which means that the risk of re-trafficking is not confined to rural areas, at least in this Appellant's case.

37. In terms of the Appellant's age, I note that he is almost 23 years of age, however I find that he is not beyond the scope of risk given that the Refusal Letter at §48 relies upon the Asylos Report (at §4 on page 28), in reaching the conclusion that because the Appellant is "firmly into adulthood" he is not at risk as "only 10% of Albanian trafficking victims in Albania are taken as adults". However, the Respondent's conclusion is wholly inconsistent with what the Asylos Report actually states at §4, which I insert for clarity and transparency:

"The ages of the boys who are victims of trafficking that I am aware of are young. The ages of the cases are from 14 years old up to 31 years old but 50% of the cases are minors. But even for the cases at the age of 18, 19 or 20 or more have been exploited when they were minors. And the abuses that they suffered have happened at a younger age - before 14 years old. So 90% of cases that I am aware of were exploited when they were minors starting from the age of 13/14 years old, sometimes even earlier".

38. I find that this information from the Asylos Report (and relied upon in the Refusal Letter), provided by an unknown source, leads to several conclusions. First, those trafficked are aged from 14 years to 31 years. Therefore, given the Appellant is 23 years old, he falls within that bracket of apparent risk. The passage also attempts to quantify into percentages the number of minors that are trafficked. It is said that 50% of those trafficked are minors. Thus, it must follow that the other 50% are adults. Given the age of those trafficked is said to include those aged 31 years, I find that the 50% of those trafficked refers to males aged 18 to 31 years of age. Finally, the source states that 90% were previously exploited when they were minors and were later trafficked when children or when aged "18, 19 or 20 or more" (i.e. young adults). In summary, from the above extract, I find that the Appellant falls within the age bracket of male VOTs as he is less than 31 years of age, I note he was exploited as a minor which is consistent with the objective evidence and thus adds to his being at risk of trafficking/re-trafficking as an adult.
39. Finally, in terms of the support network available, albeit that the Appellant's family remain in Tirana, I find that they will be unable to assist the Appellant or prevent his kidnapping given his accepted history and their previous failure to protect him from exploitation and becoming a VOT. Thus, notwithstanding that his family is being pursued for his whereabouts, the presence of a support network would be of no benefit in reducing the risk he faces on return.
40. Given my findings above, I find that the risk factors of social status and economic standing, health, area of origin, age and absence of a support network are factors which elevate the risk of once more being trafficked by criminals, thus being forced to perform unpaid labour, and being sexually abused on return. Therefore, a sufficiently serious risk on return has been established.

(c) Whether there is sufficient state protection available on return to Albania?

41. As regards state protection, while the Albanian authorities show willingness to prosecute traffickers, 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 traffickers, who still show an interest in reacquiring him.

42. As stated in my error of law decision, whilst the fact of prosecution may be a deterrent to traffickers and whilst there may be a functioning judicial system, the fact that there have equally only been three convictions in trafficking cases in the past year as highlighted at paragraph 10.6.3 of the CPIN, if anything, is arguably likely to encourage traffickers to act with impunity rather than fear repercussions of the justice system and demonstrate a sufficiency of protection. In any event, paragraph 10.5.4 of the CPIN establishes that prosecutions can take several years to pursue, whilst paragraph 10.6.7 mentions the low rates of conviction leading to consistent exploitation.
43. In his Refusal Letter, the Respondent notes at paragraph 10(xii) that the Appellant's account includes that he saw the traffickers with Police Officers whom they appeared to be on close terms with, and that the traffickers threatened him in front of the Police, which made him believe the police were corrupt. However, in assessing sufficiency of protection at paragraphs 51-56, the Respondent simply notes that there is a functioning police force. It is striking that the Appellant's evidence that the Police he encountered were corrupt, and complicit with his captors, was not confronted at all. Considering this for myself, I find that on the facts of the Appellant's account, there will be an insufficiency of protection as the objective evidence acknowledges that there is a known problem with corruption in the Police in Albania, as confirmed within the CPIN at 10.7.2 (citing an interview in the Asylos Report) which reads as follows: "I've even had discussions with officials and NGOs who work in Albania...who have acknowledged that there is a history of direct links between officials in Albanian government and police and traffickers. Some people have been prosecuted. Some individuals known to have been involved or had historic involvement, are still in positions of authority in Albania currently...".
44. Given that male trafficked returnees will also not benefit from the shelter and protection that female trafficked returnees do, the fact of a functioning justice system, notwithstanding the corruption identified in the CPIN within the security forces, and having accepted the Appellant's account that his captors are complicit with the Police, their awareness of his being trafficked and failure to act, which is consistent with the objective evidence, I conclude that there is an insufficiency of state protection on return for this Appellant.

(d) Whether internal relocation is available?

45. Notwithstanding my findings that there is an insufficiency of state protection on the facts of the Appellant's case, I go on to consider the possibility of internal relocation in any event.
46. As my starting point, I turn to the Refusal Letter, however the Respondent has not raised the possibility of internal relocation at all, and has not also suggested any area of Albania where the Appellant could relocate in safety (as opposed to his point of return, in Tirana). Mr Parvar equally did not identify any location for internal relocation despite the burden being squarely upon the Respondent to do so and demonstrate its safety. Notwithstanding this omission, Mr Parvar simply insisted that internal relocation was open to the Appellant.
47. Having already considered the risk to the Appellant arising if he were to remain at his family home in Tirana, I turn to consider the option of relocating to a 'rural area'. I note from the Asylos Report that, if relocating outside of Tirana, the Appellant would have to register his change of address 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, as he claims and as I have accepted, they would be able to do so, given the levels of corruption which exist in the police and other official bodies, especially given his evidence of their complicity with the police, which I have already accepted, and which is also consistent with the country evidence concerning internal relocation in any event.

48. In my view, notwithstanding my findings on insufficiency of state protection and corruption evident in the security forces, given the small size, and given the Respondent's acceptance that trafficking is prevalent in rural areas (to which the Appellant would presumably have to go having already been kidnapped from the capital) I reject Mr Parvar's assertion that internal relocation to a place of safety is open to the Appellant bearing in mind the lower standard of risk.
49. Drawing all of the above reasons and analysis together, and keeping my findings on membership of a PSG, risk on return, sufficiency of protection and internal relocation in mind, and taking into account the relatively recent judgment of Lord Justice Singh in MAH (Egypt) v Secretary of State for the Home Department [2023] EWCA Civ 216 at [52] which reminds judges of the low chances of risk that an appellant must establish, namely "...less than a 50% chance of persecution occurring" or "(e)ven a 10% chance that an applicant will face persecution for a Convention reason may satisfy the relevant test"; I find that there is a sufficiently serious risk on return that the Appellant will face persecution due to his membership of a PSG as a male VOT.
50. Given my findings above, even if I am wrong in finding that the Appellant is a refugee, in the alternative, I find he is in any event also able to meet the terms of paragraph 339C(iii) of the Immigration Rules as "substantial grounds" have been shown for believing that the Appellant, if returned to Albania, would face "a real risk of suffering serious harm" as a male VOT susceptible to re-trafficking and exploitation; and he is unable to avail himself of the protection of the state given the Police's complicity with the traffickers and qualifies for humanitarian protection.

Notice of Decision

51. In summary, I therefore allow the Appellant's appeal against the refusal of his protection claim and/or on humanitarian protection grounds in the alternative.

P. Saini

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

6 March 2024

APPENDIX: ERROR OF LAW DECISION

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DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Munonyedi dismissing his appeal against a refusal of his protection claim. The decision was promulgated on 10th July 2023.
2. The Appellant applied for permission to appeal against that decision which was granted by First-tier Tribunal Judge Oxlade in the following terms:

2. I reject the argument made in 4(a) ('Ground 1;) that the Judge erred in law by failing to apply country guidance (namely TD and AD) in view of the CPIN at 3.3.2 which identifies some of the same risk factors which are equally applicable to men, as women. The CG case is applicable only to women/girls, and it cannot be an error of law to fail to more widely apply it.
 3. However, it is an arguable error of law as identified at 4(c) and (d) ('grounds 3 and 4') for the Judge to give insufficient weight to the past events as an indicator of future risks, particularly in view of this Appellant's acknowledged vulnerabilities, when considered alongside the risk factors identified in the CPIN 3.3.2 - albeit that the Judge did set out in detail the evidence as to efforts made by the Albanian government to tackle trafficking and re-trafficking.
 4. Permission to appeal is granted, no limited to grounds 3 and 4.
3. The parties agreed that notwithstanding the lack of clarity in paragraph 4 above, the grant of permission was not a restrictive one and the First-tier Tribunal Judge had granted permission on all grounds.
 4. The Respondent provided the Appellant with a Rule 24 response which I have also taken into account in reaching this decision.

Findings

5. At the close of the hearing I reserved my decision which I shall now give. I do find that the Grounds of Appeal demonstrate material errors of law in the decision of the First-tier Tribunal for the following reasons.
6. Taking the Grounds of Appeal in turn, the first ground relates to the allegation that the First-tier Tribunal Judge failed to apply the guidance given in the country guidance case of TD and AD CG [2016] UKUT 00092 (IAC) when finding that the Appellant was not at risk of re-trafficking. In respect of this ground, Ms Norman, who did not draft the Grounds of Appeal, sought to distance herself from the suggestion that TD and AD was not followed given that it pertains to trafficked women and instead adopted the content of the grounds, chiefly the complaint that there are factors within the decision which point to membership of a particular social group and those factors giving rise to a risk of persecution on account of being a member of such a group, and whether a person would be able to access sufficiency of protection or not from the authorities in Albania could, and should, have been considered by the First-tier Tribunal Judge in her decision. The reason Ms Norman was able to pursue this argument is because the same factors listed in the Grounds of Appeal also happen to appear at paragraph 37 of the Appellant's Appeal Skeleton Argument ("ASA") (numbering 47 paragraphs drafted by the Appellant's solicitors) that was before the First-tier Tribunal. At paragraph 37 of that ASA, the solicitors sought to rely upon the risk factors, as they so termed them, raised in the country guidance case of TD and AD arguing that those factors were of particular relevance.
7. Before turning to those factors I pause to note that regardless of whether or not TD and AD is solely applicable to women, the fact that the solicitors sought to pray in aid these risk factors as being potentially applicable to men is a matter which they were precluded from doing simply because TD and AD pertains to

trafficked women *per se*. It is of course perfectly acceptable for the Appellant's solicitors to pray in aid these risk factors as also being equally applicable to the Appellant, notwithstanding the fact that he is a male trafficked person, as the Secretary of State accepted and as reflected at §5 of the First-tier Tribunal's decision. Those factors listed at paragraph 37 are, in short, as follows:

- (a) The social status and economic standing of the Appellant's family.
- (b) The Appellant's level of education.
- (c) The Appellant's age when he left Albania.
- (d) What support network will be available on return.
- (e) The willingness and ability to seek help from the authorities in Albania.

8. In order to demonstrate the materiality of failing to consider these risk factors, Ms Norman pointed to the ASA and exemplified how these factors were met by virtue of the facts germane to the Appellant's case including that the Appellant was from a low and poor social status and economic standing (as exemplified by his mother being a dishwasher and his father having passed on) and the fact that the Appellant received limited education and that he was trafficked as a child and that he cannot have a support network given that the traffickers continued to target his family for the time fleeing their control and given that there remains a debt which the family must free themselves from; as well as the inability to seek assistance from the authorities (although this was expanded upon in a further ground). In addition to this Ms Norman prayed in aid paragraph 3.3.2 of the February 2023 Country Policy and Information Note (CPIN) which confirmed that "men and boys from lower economic backgrounds with a low level of education are more likely to be vulnerable to being trafficked or re-trafficked than men and boys in general". This alongside paragraph 3.3.7 of the CPIN which confirmed that:

"The risk of serious harm on return to trafficked men and boys will depend upon their personal circumstances such as their age, education, skills, employability, area of origin, health or disability, availability of a support network, and the intent and reach of their traffickers"

satisfies me that the factors raised in the ASA at paragraph 37 and those flagged in the CPIN at paragraph 3.3.7 are indeed factors which the Tribunal Judge should have taken into consideration in assessing the risk on return to the Appellant, not least where they were explicitly raised by the Appellant in his ASA. This consideration may have altered the outcome of the appeal. For these reasons, I find that there is a material error of law identified in Ground 1.

9. For the sake of completeness I do not find that §10 of the decision (which highlights the CPIN), and §§16-17 (which also highlight the CPIN), satisfy me that the risk factors identified have been taken into account by the First-tier Tribunal, not least because at §10, which *précise*s these references to the CPIN, the judge has stated in her own words that she has "considered" the following material from the CPIN. This is, of course, quite distinct from considering the risk factors against the CPIN rather than considering the CPIN in isolation. Additionally, I do not find, as Ms McKenzie sought to persuade me, that the complaint raised is one which falls foul of the headnote in Budhathoki (reasons for decisions) [2014] UKUT 341 (IAC). The headnote in that reported decision states that "It is

generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case...“; however this is not a mere detail that was insisted upon but a substantive part of the argument which needed to be resolved one way or the other.

10. Turning to Ground 2 and the complaint that the judge failed to give reasons for finding that the traffickers would be prosecuted, I accept that §24 which states that sufficiency of protection is available is somewhat confusing. The paragraph purports to deal with protection from the authorities, however simply makes a bright line finding that “once his former slave masters are aware of the support and protection that he will be receiving from the authorities, any contact with the Appellant would lead to their arrest and prosecution as part of the state’s response to punishing human traffickers and slave masters”. The material said to support this finding is paragraph 2.3.8 of the December 2022 CPIN which mentions merely that there is a functioning judicial system and that despite corruption being a problem the government continues to vet judges and prosecutors. This however does not demonstrate or provide a basis for the judge to find that the support and protection in the state’s response to punishing traffickers and slave masters will provide a sufficiency of protection. Needless to say, the fact of prosecution may be a deterrent to traffickers and whilst there may be a functioning judicial system, as Ms Norman highlighted, the fact that there have been only three convictions in trafficking cases in the past year as highlighted at paragraph 10.6.3 of the CPIN, if anything, is arguably likely to encourage traffickers to act with impunity rather than fear repercussions of the justice system and demonstrate a sufficiency of protection. In any event, it is acknowledged in the CPIN at paragraph 10.5.4 that prosecutions can take several years to pursue, whilst paragraph 10.6.7 mentions the low rates of conviction leading to consistent exploitation. Given that male trafficked returnees will not benefit from the shelter and protection that female trafficked returnees do, the fact of a functioning justice system, notwithstanding the corruption identified in the CPIN within the security forces, is arguably the primary reason given by the First-tier Tribunal Judge for finding that there will be a sufficiency of protection which is an unreasoned one against the material contained in the CPIN which at least demonstrates the basis for the judge’s finding is incomplete. This is particularly so given that the Respondent has accepted that the traffickers continued to pursue him through his mother for the intervening four years and given that the Appellant’s accepted account as a trafficked person includes that his traffickers were seen to be on close terms with the police and threatened him in their presence also.
11. Turning to Ground 3 and the argument that there was a failure to have regard to material evidence including a failure to consider the Appellant as a vulnerable person, particularly as §5 of the decision acknowledged the Respondent’s acceptance that the Appellant was a victim of modern day slavery, forced to work in a cannabis factory and sexually abused and exploited in Albania; and also as at paragraph 33 of the Secretary of State’s refusal letter it was explicitly stated that the Appellant had provided a sufficiently detailed, internally inconsistent and plausible account of the relevant events which was consistent with external evidence regarding trafficking in Albania and is “deemed to be of significant weight”. I find this error is therefore proven as this omission may have altered the outcome of the appeal.

12. Turning to Ground 4 and the argument that the judge failed to consider paragraph 339(K) of the Immigration Rules, it is useful to first note the content of paragraph 339(K) which reads as follows:

“The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person’s well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated”.

Given that the Respondent accepted, and as the judge was aware according to §5, that the Appellant was a victim of modern day slavery and was sexually abused and exploited in Albania, this could arguably have met the description of serious harm and given that past harm the Appellant has suffered, I accept that the judge could have regarded this as “a serious indication” of the Appellant’s real risk of suffering serious harm on return unless there were good reasons to consider that it would not be repeated on that further occasion, which may have altered the outcome of the appeal. I find this error is therefore proven as this omission may have altered the outcome of the appeal.

13. In light of the above findings, I find that the decision of the First-tier Tribunal does contain material errors of law.

Notice of Decision

14. The appeal to the Upper Tribunal is allowed. The decision of the First-tier Tribunal is set aside in its entirety.

Directions

15. The appeal is to be retained in the Upper Tribunal at the agreement of both parties.
16. The time estimate agreed is two hours.
17. An Albanian interpreter is required.
18. The Appellant alone is being called to give evidence.
19. I maintain the anonymity direction made by the First-tier Tribunal.
20. This matter is to be re-listed before any Deputy or Upper Tribunal Judge at the first available date.

P. Saini

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 October 2023