



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04217/2018

THE IMMIGRATION ACTS

Heard at Field House
On 10 September 2018

Decision & Reasons Promulgated
On 13 September 2018

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

R M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Panagiotopoulou, Counsel instructed by Howe
& Co Solicitors

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Albania. His date of birth is 20 September 1988.
2. The appellant made an application for asylum. His application was refused by the Secretary of State on 14 March 2018. The appellant appealed against the decision of the Secretary of State. His appeal was dismissed by First-tier Tribunal Judge SLL Boyes in a decision of 6 July 2018 following a hearing at Harmondsworth on 26 April 2018.

Permission was granted to the appellant on 31 July 2018 by First-tier Tribunal Judge SPJ Buchanan.

3. The appellant came to the UK in July 2017. He claimed asylum on 1 December 2017. The appellant's case is that he is gay and fears persecution on return to Albania as a result of his sexuality. It was accepted by the judge that the appellant is at risk on return from his family in his home area of Albania. The judge found that he could safely and reasonably relocate to Tirana.
4. The appellant's evidence was that in 2015 he left his home area and stayed in Tirana with his cousin. He left Albania in October/November 2015 and returned in January 2016. He stayed with an aunt in Greece. He again left Albania in April/May 2016 and returned in July 2016. On this occasion he travelled to Italy and stayed with cousins. He did not claim asylum either in Greece or Italy. He finally Albania on the final occasion in May 2017. He travelled to France then Italy from where he flew to the UK.

The Decision of the FtT

5. It was accepted by the Secretary of State that the appellant is gay. The judge found him credible and his evidence consistent. She found at paragraph 38 that the appellant encountered past ill-treatment at the hands of his family. The judge found that his evidence was internally consistent and that his answers, insofar as they relate to past treatment at the hands of his father, were clear and appropriately detailed.
6. The judge found that it was clear from the background country information that family related violence against individuals who come out as gay to their family was widespread in Albania given the anti LGBT sentiments that prevail there. The judge stated that taking into account the appellant's evidence and the background evidence she was satisfied that he was ill-treated by his family as claimed. The judge accepted the appellant's claims of bullying and humiliation whilst at school in both his home area and in Tirana. The judge went on to consider risk on return on the basis that he had previously been subjected to ill-treatment by his family.
7. The judge at paragraph 47 recorded the appellant's evidence that he had not been involved in the gay community in the UK. His evidence was that he did not go out because he wanted to regularise his status first. The judge found that whilst the appellant had not been in a same sex relationship in the UK and he was not in a relationship at the point when he left Albania, this did not necessarily mean that he would choose to live discreetly if he was returned to Albania. The judge found that he had only been in the UK for a short period and most of that time was before he had brought himself to the attention of the authorities or when he was in detention. The judge recorded that the appellant's live evidence was that he was asked if it was his wish to live openly as a gay man and he answered in the affirmative stating that is why he came here. The judge found that given his past history and considering his circumstances in the round the appellant would wish to live openly as a gay man.

8. The judge found at paragraph 48 that there was a difference between choosing to live discreetly because of family pressure and having to hide one's sexuality because of fear of serious harm or persecution. The judge found that in this case the appellant's family are already aware of his sexual orientation and unless he were to pretend to them that he was not gay which he cannot be expected to do to avoid persecution there will be a serious risk that he would come to harm at the hands of his family if he were to return to his home area. The judge went on to find that the appellant's fear of ill-treatment at the hands of his father was objectively well-founded.
9. The judge found at paragraph 50 that whilst it can be seen from the background country information that some attempts have been made by the Albanian authorities to raise awareness, homophobia is still endemic in Albanian society and LGBT persons who report matters to the police still face abuse or ridicule. The judge found that consequently it could not presently be said that the police would be willing to provide protection in the appellant's home area.
9. The judge at paragraph 51 turned to consider relocation. The judge took into account that the appellant had previously resided in Tirana before leaving Albania interspersed with time spent in two other European areas. The judge found that there was no suggestion that the appellant had come to any harm at the hands of his family when he previously resided in Tirana. The judge made the following findings in relation to relocation:
 - "52. He returned to Tirana on two occasions having been to Greece and then Italy, rather than claiming asylum in either of those EEA countries. When he was asked in live evidence if he came to any physical harm once he moved to Tirana, he stated '*only pushing and humiliation*' and that he could not stay there any longer. His evidence in respect of this treatment was none specific. As I have said above, I do not consider that the Appellant has in any way tried to embellish the treatment that he has been subjected to in the past, and I have no reason to doubt what he says in respect of his experiences in Tirana. However, whilst the treatment that the Appellant has received was no doubt distressing for him, the fact that the Appellant could not provide clear specific details suggests that none of the incidents were such that they would amount to persecution. Therefore, I do not consider that the treatment that the Appellant experienced whilst living in Tirana, when considered individually, or even cumulatively, amounts to persecution [or serious harm sufficient to engage Article 3 of the ECHR]. On the evidence before me, I am therefore not satisfied that, there are substantial grounds for thinking that the Appellant would be persecuted in Tirana if he were to relocate there.
 53. The Appellant previously lived in Tirana for two years, although he spent two three month periods within those two years in Greece and Italy. He previously lived with a relative when in Tirana. He has not said that that relative would not accommodate him if he were to return to Tirana. Even if he was not prepared to do so, there are various NGOs providing assistance to LGBT persons, including a shelter for teenagers and young adults at risk of violence or homeless.

54. A Rule 35 report was previously prepared when the Appellant was in detention, although I have not been provided with a copy. Whilst the Appellant states that he has self harmed previously and he has thought of taking his own life, there is no medical evidence before me regarding the current state of his mental health. I therefore have no evidence before me to demonstrate what effect, if any, removing the Appellant to Tirana would have on his mental wellbeing. Although I accept that he does not want to return there, and would prefer to remain in a more liberal society such as the UK, that is not enough, without more, to make the requirement that he internally relocate to Tirana unreasonable or unduly harsh.
55. Therefore, as the Appellant can avail himself of internal relocation, on the evidence before me, the Appellant does not meet the requirements to be recognised as a refugee.”

The Grounds of Appeal

10. The grounds assert that the judge failed to have regard to the appellant’s evidence that he fears being targeted as a result of his sexual orientation not only from his family but from society as a whole in Tirana. It is asserted that in this context the judge did not consider the treatment that the appellant experienced whilst living in Tirana. The treatment that the appellant described in oral evidence was not consistent with that recorded by the judge at paragraph 52. It was not limited to pushing and humiliation. During cross-examination the appellant expanded on that evidence. This is set out at paragraph 5 of the grounds. It is asserted that it was clear from his evidence that the reaction to his sexual identity by the community in Tirana was such that the appellant feared for his safety and was unable to obtain any protection from the authorities.
11. It is further submitted that the judge failed to consider whether relocation would be unduly harsh bearing in mind the appellant’s age, lack of support from his family and the community as a whole and his fragile state of mind with respect to a previous incident of self-harm as referred to at paragraph 11 of the Reasons for Refusal Letter. The judge also failed to consider unavailability of shelters referred to in a supplementary bundle of country background evidence which was submitted at the hearing.
12. It was argued that the judge erred when considering paragraph 276ADE(1)(vi) and concluding that there would be no very significant obstacles to the appellant’s integration. This finding runs contrary to the background evidence which refers to homophobia being rife in Albanian society. This must be considered in the context of the appellant’s wish to not live discreetly should he be returned there.
13. In oral submissions Ms Panagiotopoulou stated that there was no evidence that the appellant’s cousin could re-accommodate him.
14. I was referred to the appellant’s asylum interview and the following questions and answers:

Question 53 Do you have contact with anyone else in ALB currently?

- Answer No I haven't been in touch with anyone in ALB.
- Question 70 Who do you fear in ALB?
Answer My family - who kicked me out and the society - the friends and people around me - they don't support me - they reject me.
- Question 71 Do you fear people who are in your home town close to your SEF address only. Is this only localised people here?
Answer Not being accepted by them.
- Repeated question - Also I fear community in Tirana - where I lived - they haven't accepted me - they haven't supported me. They wouldn't talk to me.
- Question 72 Where did you go to live in Tirana?
Answer In January 2016.
- Question 73 Has it only been this one time you went to live in Tirana?
Answer I returned to Tirana after my travels to Europe - until May 2017.
- Question 74 What did you do in Tirana?
Answer Attending school nothing else.
- Question 75 Did you have problems in Tirana?
Answer Other students at school - they didn't accept me.
- Question 76 What do you feel will happen to you if you return to ALB?
Answer I cannot go back to my family because they don't love me - they don't want me there because they have told me that if I go to ALB - they will kill me.
- Question 80 Have you faced problems as a result of your sexuality in ALB?
Answer Yes.
- Question 81 Have these problems ever been physical - i.e. physical harm?
Answer Yes, they have been physical.
- Question 82 Has there been incidents where you have been harmed in ALB due to your sexuality? Roughly how many incidents?
Answer Roughly three-four times approximately.
- Question 166 Tell me more please.
Answer Some boys and girls found out reason why I was kept home for 1.5 months. After kids found out about me - they made fun of me - they see me in a different way. Friends would keep their distance and

wouldn't come near me. In 2014 I became depressed and I went to my family home and attempted to kill myself with a knife.

Question 179 You have not demonstrated any harm from police or State authorities – you fear society only it appears – is there anywhere in ALB where society is accepting of gay people.

Answer No, I don't think there are places where gay people are accepted. I lived in Tirana and you are not accepted by the community.

15. It was argued that the judge concentrated on past treatment only and did not consider what may happen in the context of the background evidence. The judge did not consider the previous suicide attempt and the appellant's mental fragility. He was a vulnerable person.
16. Consideration of paragraph 276ADE was brief and there was no proper consideration of very significant obstacles. The test is not the same as relocation. Even if the judge properly considered relocation, the decision under paragraph 276ADE is flawed. She erred in respect of very significant obstacles because the concept encompasses other more subjective issues; for example, how he will be treated bearing in mind that he cannot live discreetly.
17. Ms Isherwood made submissions. She submitted that there was no error of law and that the grounds amount to mere disagreement. The judge properly considered reasonableness and took into account all relevant matters. The appellant has already relocated to Tirana and the judge was entitled to assume that he could reside with his cousin in the absence of evidence to the contrary.

Error of Law

18. I remind myself in respect of the law on relocation in AH [2007] EWCA Civ 297 Lord Bingham at paragraph 5 stated as follows:

“In paragraph 21 of my opinion in Januzi I summarise the correct approach to the problem of internal relocation in terms of which all my noble and learned friends agreed:

“The decisionmaker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so ... There is, as Simon Brown LJ aptly observed in Svazas v Secretary of State for the Home Department, [2002] 1 WLR 1891, paragraph 55, a spectrum of cases. The decisionmaker must do his best to decide, on such material as is available, where on the spectrum the particular case falls ... all must depend on a fair assessment of the facts.”

Although specifically directed to a secondary issue in the case, these observations are plainly of general application. It is not easy to see how the Rule could be more specifically or clearly expressed. It is, or should be, evident that the enquiry must be directed to the situation of the particular applicant, whose age, gender, experience, health, skills and family ties may all be very relevant. There is no warrant for excluding, or giving priority to, consideration of the applicant's way of life in the place of persecution. There is no warrant for excluding, or giving priority to, consideration of conditions generally prevailing in the home country. I do not underestimate the difficulty of decision-making in some cases. But the difficulty lies in applying the test, not in expressing it. The humanitarian object of the Refugee Convention is to secure a reasonable measure of protection for those with a well-founded fear of persecution in their home country or some part of it, it is not to procure a general levelling up of living standards around the world, desirable though of course that is."

Error of Law

19. The account given by the appellant in oral evidence and asylum interview was not that he had been persecuted in Tirana. His case was advanced on the basis that he had been persecuted in his home area by his family and this was accepted by the judge. I note that his witness statement is silent on the issue of ill-treatment in Tirana. It was nevertheless incumbent on the judge to consider the reasonableness of relocation.
20. The background evidence before the judge paints a dim picture of Albanian society as regards attitudes to LGBT individuals. They continue to experience discrimination from individuals and institutions. There are incidents of violence. There is much in the background evidence relating to family attitudes and treatment and it is this on which the judge relied when concluding that the appellant would be at risk of persecution in his home area. The background evidence indicates that violence is unreported because unfortunately most of it is exercised directly by family members.
21. In relation to the appellant's evidence about what had happened to him in Tirana the judge was entitled to conclude that his evidence was that he had been pushed and humiliated. This is not at odds with the cross-examination recorded at paragraph 5 by the appellant's representative where the appellant gave an account of bullying and humiliation that occurred whilst he was at school. I have taken into account the questions and answers I was referred to in the appellant's asylum interview. It is not clear to me whether the judge was referred to these in submissions. In any event, they do not disclose an account of persecution in Tirana. The appellant's account is that he attended school in Tirana where he was not accepted and that he was unsupported. It is not entirely clear where the physical assaults. However, the appellant did not expand on this in his evidence. It can be reasonably inferred that they related to when he was in his home area. If it was the case that he was assaulted in Tirana, it is reasonable to have expected the appellant to give a full account of these incidents in his witness statement or oral evidence. What the appellant feared in Tirana was

discrimination, harassment and a lack of support which does not amount to persecution. This would accord with the background evidence.

22. The judge was entitled to infer from the evidence that the appellant would be accommodated by his cousin, XB, in the absence of evidence to the contrary. There was no evidence that his cousin was not willing or able to accommodate him.
23. I find that the judge did not consider material matters when assessing whether relocation was reasonable. The judge did not consider all relevant circumstances including the intention to live openly when considering relocation. The appellant is a young man of 20 with a history of self-harm. He will be returning to Tirana where he will be discriminated against as a result of his sexuality. He fears at best isolation, disapproval and discrimination in Tirana and at worst attack without redress. These are all possibilities. The background evidence gives credence to his fears and all the more so because as found by the judge he would live openly as a gay man. Although he would be accommodated by his cousin, he would not be accepted by his peers or have the support of the wider family. Whilst there was no up-to-date evidence relating to the appellant's mental health, there was evidence that he had previously attempted to take his own life in 2014 (the Rule 35 report supported this) and he is to an extent vulnerable. This was a factor the judge should have attached some weight to in the context of relocation. In addition, the appellant left Albania on two occasions prior to coming to the UK which is capable of supporting his account of life in Tirana. The judge materially erred. The decision of the judge to dismiss the appeal is set aside. I find that it would not be reasonable for the appellant to relocate to Albania.
24. I remake the decision and allow the appeal on asylum grounds.

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 him or any member of their 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: Joanna McWilliam

Date 12 September 2018

Upper Tribunal Judge McWilliam