



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

Appeal Number: PA/08836/2018

**THE IMMIGRATION ACTS**

**Heard at Cardiff CJC  
On 20 June 2019**

**Decision & Reasons Promulgated  
On 23 July 2019**

**Before**

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

**Between**

**MS DD  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr C Howells, Home Office Presenting Officer

For the Respondent: Mr P Georget, Counsel, instructed by Malik & Malik  
Solicitors

**DECISION AND REASONS**

1. The respondent (hereinafter the claimant) is a national of Albania born in 1982. She has two children born in 2004 and 2006. She arrived in the UK in November 2015 and claimed asylum. The basis of her claim was that she suffered domestic violence at the hands of her husband who was a person who had connections with the police. In addition, her children had suffered violence at his hands and she and her daughter had mental health problems. Her claim was initially refused on 26 February 2016 and was refused again on 27 June 2018. She appealed. On 27 September

2018 Judge Havard of the First-tier Tribunal (FtT) dismissed her appeal. The judge found her account credible and concluded that due to the best interests of her children the claimant would be unable to avail herself of the protection of the authorities in Albania. Since the judge did not accept that the claimant was a member of a particular social group, he dismissed her asylum claim but allowed it on humanitarian protection and Article 8 grounds. The appellant (hereafter the Secretary of State or SSHD) appealed and in a decision dated 6 March 2019 Upper Tribunal Judge Allen set aside the judge's decision for material error of law essentially because the judge had failed to square his protection findings with his finding on the best interests of the child and there was a lack of material reasons. UTJ Allen, also found error in the judge's Article 8 findings, considering them to evince a failure to take into account public interest considerations weighing against the claimant. UTJ Allen concluded at paragraph 21:

“Accordingly, I find material errors of law in the judge's decision such that it falls to be set aside. I see no reason why the matter needs to go back to the First-tier Tribunal in light of the judge's clear and unchallenged findings of fact. I may be that up-to-date evidence will need to be provided, and therefore there will need to be a further hearing. Bearing in mind that the original hearing took place in Newport and the family live in Cardiff, I direct that the matter be listed for a rehearing on the basis of the judge's unchallenged findings of fact, to take place at the Cardiff Civil Justice Centre.”

2. At the hearing I heard submissions from both representatives, for which I express my gratitude.
3. Mr Howells submitted that the latest CIPIN Albania: Domestic abuse and violence against women, V3.0 December 2018 indicated that a person such as the claimant would be able to receive adequate protection. There were well run shelters in Tirana and other places and they would be able to provide sufficient anonymity and security for the claimant and her two children. It was important to note that there had been a recent change in the law with effect from September 2018, strengthening measures to protect women against domestic violence. There was no longer delay on the part of the authorities whilst women sought protection orders. The latest CIPIN also demonstrated that the Albanian authorities would be able to secure the long-term future of the appellant and her children. There was adequate mental health provision. On the claimant's own evidence, she had been able to work in Albania in a bakery and train as a hairdresser even whilst enduring domestic violence and suffering from depression. The claim would be able to obtain sufficient protection, even if she had to relocate outside her home area and Tirana.
4. As regards Article 8, Mr Howells submitted that the claimant had only been outside Albania for four years and would clearly be able to reintegrate without very significant obstacles, which was, an elevated test. The best interest of her two children, aged 15 and 12 would be to remain with the claimant wherever she was. The oldest child was said to be missing in the UK which underlined the benefit to the family of returning to the

conservative society she had grown up in. Neither child was a qualifying child. In the claimant's case, there were strong public interest considerations weighing against her claim.

5. Mr Georget, with reference to his skeleton argument, said he accepted that there was in general a sufficiency of protection in Albania but that it would not extend to the claimant given her particular circumstances. It was particularly important to bear in mind the special circumstances of the claimant's children. The oldest had run away in the UK and, on the premise adopted by Mr Howells (that the family would be returned together), there would be a risk that the eldest child would be exploited. The fact that there was evidence of safeguards against rogue police accessing databases was not to the point, as the claimant would have to access the registration system, to which the police would have access. It was unrealistic to expect that claimant to go to the police for protection, as there was evidence of widespread corruption. There was a real risk that the claimant's husband's police connections would learn that she and her children were back. If she took any court action to secure custody of her children, her husband would have a right of contact. If he had intention to harm the claimant, he could use the law to his advantage. It was also important to bear in mind that it was accepted that shelters were not a long-term solution and, post- shelter, the claimant and her children would be vulnerable. Albania is a small country.
6. Given that the claimant would not be safe in her home area or Tirana, it was important to consider, he added, the issue of reasonableness of relocation, bearing in mind the claimant and her children would have his family support.
7. As regards Article 8, Mr Georget submitted that on the evidence there would clearly be very significant obstacles to the claimant's integration.
8. Asked by me to clarify what relevance the parties saw the Tribunal country guidance case of **TD and AD (Trafficked women)** CG [2016] UKUT 92 to this case, Mr Howells said he accepted that although it was a case about trafficking it gave guidance on the situation of women's shelters. Read together with the latest CIPIN, he believed that its conclusions supported the SSHD's position. Mr Georget said that paragraphs 171 of **TD** was particularly relevant to the claimant's case.

### **My Decision**

9. As noted earlier, UTJ Allen made a specific direction that the unchallenged finding of fact made by the FtT Judge were to be preserved. It is important therefore to first of all to identify what those findings of fact were. Two key paragraphs setting them out are 145 and 146:

"145. I also note that, within the Appellant's bundle, there are references to the Appellant having sought treatment from her doctor for anxiety and has been prescribed appropriate

medication. Whilst the Appellant states as recently as February 2018 that she has frequent thoughts of killing herself, the notes state “no specific plans, children are protecting factors”. No psychiatric evidence has been presented but the medical records are consistent with the Appellant suffering from anxiety and low mood. Taking account of all the evidence relating to the Appellant’s personal circumstances, were she a single woman and no dependants, on the basis of the findings of the FFM report, the Appellant would receive adequate support and protection if she were to return to Tirana. She could reside within one of the shelters that are available which can also provide her with support for her mental health condition.

146. However, I take into consideration the fact that, at the time the Appellant left Albania, she was residing with her children and her husband in Tirana. It is not known whether her husband continues to reside there but there is no evidence that he has moved. Further, I have accepted the Appellant’s evidence that relatives of her husband are in the police force. *Whilst the FFM concludes that the shelters are professionally run and have effective safeguards against being detected, the particular circumstances of this Appellant give rise to a risk of her return to Tirana being discovered.*” (emphasis added).

10. In addition, the judge noted at paragraph 137 that the Home Office Presenting Officer had confirmed that if the claimant and her children were required to return to Albania “they would be returned to the capital, Tirana. The [claimant] was living with her husband and children when they left.” The SSHD’s grounds did not seek to resile from this position.
11. Accordingly, there are unchallenged findings that the claimant would be at risk on return to Tirana, even if in a professionally run shelter with effective safeguards against being detected, because in the particular circumstance the fact that her husband had relatives in the police force would put her at real risk of being discovered. Given that unchallenged finding of fact, I consider the claimant is entitled to succeed. Whether or not her home area is treated as Hus in Northern Albania (where she grew up and where her family forced her into marriage with her husband and where they lived between March 2003 and 2009) or Tirana (where she lived with her husband from 2009 until she left in July 2015 with her two children), the SSHD’s position is that she will be returned to Tirana. It is reasonable to assume that having been returned to Tirana and having lived in Tirana prior to departure, the claimant and her children would be processed by the city authorities in Tirana. On the judge’s unchallenged findings, in Tirana there would be a real risk of her husband discovering her presence in Tirana, even if she is placed in a women’s centre.
12. I find it troublesome that despite recent legislative reforms, the procedure described in the CIPIN still envisages that upon a woman making herself known to the local authorities as a victim of domestic violence, this continues to involve the Police Department and they lodge Protection Orders on behalf of the victim which then leads to the perpetrator being

interviewed by the police; see paragraph 5.3.5 – 5.3.6. Sometimes the police take the role of the male (5.3.7). Given that there was unchallenged evidence that the claimant's husband had police connections throughout Albania, I am not persuaded that this procedure would not lead to identification.

13. It will be apparent from the above that I consider much of the discussion between the parties as to the viability of internal relocation misplaced. Mr Howells has submitted that there are centres outside Tirana where the claimant would be able to relocate without risk of discovery from her husband in Tirana. But his submissions do not explain how the claimant would be able to access those centres given that the SSHD would return her to Tirana. Nothing in the background evidence suggests these centres can be accessed directly; rather women must apply through the civil registration system. In any event, even if I was to accept that the claimant would somehow be able to gain access to one of the centres outside Tirana (there are only three of them, in Elbason, Vlora and Shkodra (see CIPIN paragraph 2.4.8)), I would still have concluded that she would not have a viable internal relocation alternative. On the basis of the judge's finding as stated in paragraph 136, the risk of discovery by her husband was not confined to Tirana. It was also an unchallenged finding of fact made by the judge on the basis of the claimant's evidence that the husband's relatives had connections across Albania. If on the judge's unchallenged finding the husband would be able to discover her present in Tirana (by virtue of her police connection), then it is difficult to infer otherwise than that such police connections would operate to the same effect wherever the claimant went in Albania.
14. A further consideration I would have applied had I considered there to be a live issue regarding safety in one of the three centres outside Tirana, was that the claimant would be returning with two children. On the judge's unchallenged finding of fact the claimant suffers from depression and low mood and both children were subjected to violence at the hands of their father, both endured a traumatic journey to the UK (one of the camps they were staying at in Germany was attacked by a racist group), the daughter G has been receiving medical treatment but as recently as February 2014 attempted to self-harm and in July 2018 she took an overdose. On the basis of the background evidence, both the claimant and her daughter would have access to psychiatric help in the centres, but given that her daughter G has run away in the UK, it is likely that when in a centre in Albania she will have (or cause) more than usual difficulties. I agree with Mr Georget that as a result G may well be at risk of harm as a vulnerable young woman and that, if she gets into difficulties outside the centre, that is also likely to increase the risk of her being identified by her father via his police connections.
15. I understand the force of some of Mr Howells, submission and if I had been deciding the facts for myself I may have taken a different view about the degree of risk the claimant and her children faced of discovery from her

violent husband. But I am not considering the facts de novo, but strictly on the basis of the unchallenged finding of fact made by the FtT judge. For the reasons I have given, I consider that on the basis of those findings the claimant would face a real risk on return to Albania.

16. In light of my finding that the claimant is entitled to humanitarian protection, it is unnecessary for me to make a decision on the Article 8 circumstances of the claimant except to say that ipso facto, on the basis of my conclusions regarding risk on return, the claimant would plainly face also a disproportionate breach of her Article 8 right.

17. To conclude:

The decision of the FtT judge has already been set aside by UTJ Allen for material error of law.

The decision I re-make is to allow the claimant's appeal on humanitarian protection 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

Date: 9 July 2019



Dr H H Storey  
Judge of the Upper Tribunal