



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

Appeal Number: PA/13285/2017

THE IMMIGRATION ACTS

**Heard at Bradford
On 15 February 2019**

**Decision and Reasons Promulgated
On 14 May 2019**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

H

(ANONYMITY DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:

Mr Jagadeshm (Counsel)

For the Respondent:

Mr M Diwnycz (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. On 30 November 2017, the Secretary of State refused the claimant's application for international protection. The claimant appealed but on 26 February 2018, following a hearing of 24 January 2018, the First-tier Tribunal (the tribunal) dismissed his appeal. Permission to appeal to the Upper Tribunal was granted and on 3 December 2018, I set aside the tribunal's decision and directed that the decision be remade in the Upper Tribunal after a further hearing. That hearing took place on 15 February 2019. In remaking the decision, I have decided to dismiss the claimant's appeal against the Secretary of State's decision of 30 November 2017. What follows amounts to an explanation as to why.

2. The claimant is a national of Albania. He was born on 22 June 2000 and was, therefore, as of 15 February 2019, aged eighteen years. He lived in a village close to Shkoder in the northern part of Albania with his family. He entered the United Kingdom (UK) on 20 March 2017 in a clandestine manner. It is recorded that he claimed international protection on that date. As with most such applicants he attended a screening interview and, thereafter, a substantive asylum interview. The factual claim he made was a simple and straightforward one. He said that his father had been violent towards him persistently and from an early age, and had also been violent towards his mother. In his substantive asylum interview he mentioned being beaten (as I understand it frequently) with a belt. He says that there came a time when he could tolerate the violence no longer and so, assisted financially by an uncle, he fled Albania and came to the UK. He has asserted, or it has been asserted on this behalf, that if he is to return to his home area in Albania he will be subjected to physical violence at the hands of his father; that there will not be available to him a sufficiency of protection from the authorities in Albania; and that he could not safely take advantage of an internal flight alternative but that even if he could, it would be unduly harsh to expect him to do so.

3. The Secretary of State accepted, to the lower standard applicable in cases where international protection is sought, that the claimant had been a victim of violence at the hands of his father. But the Secretary of State thought that the authorities would be able to provide a sufficiency of protection and that, if not, he would in any event be able to re-locate to a different part of Albania. That is why his application was refused. As noted, the claimant's appeal to the tribunal was unsuccessful. The tribunal itself concluded there would be a sufficiency of protection, internal flight was in any event available, and that he could not succeed under Article 8 of the European Convention on Human Rights (ECHR). When I set aside that decision I preserved the tribunal's positive credibility findings with respect to the claimant's assertion that he had been subjected to violence by his father. I did not preserve anything else. I directed that there be a further hearing so that matters relevant to the remaking of the decision could receive further consideration. I suggested that the key issues would be those concerning sufficiency of protection, internal flight and Article 8 of the ECHR. That proved to be the case.

4. When I heard the case on 15 February 2019 I had before me all of the documents which had been before the tribunal. That material was supplemented by an additional bundle filed on behalf of the claimant (meaning that there were three claimant bundles in total) and a skeleton argument filed on behalf of the claimant and drafted by Mr Jagadeshm.

5. I heard oral evidence from the claimant prior to receiving submissions from the two representatives. The claimant's oral evidence was relatively brief. He adopted a witness

statement of 7 February 2019 and told me that he has a sister who is engaged to be married. He has various other relatives in Albania. As to submissions, Mr Diwnycz relied upon the content of the Secretary of State's detailed written decision (sometimes referred to as the "Reasons for Refusal Letter". Mr Jagadeshm relied upon his skeleton argument. As to sufficiency of protection, he contended that the evidence including background country material demonstrated that such was not in place for victims of domestic violence in Albania. He referred me, in that context, to a number of items of documentary evidence which he asserted pointed that way. As to internal flight, there would be the risk of his father encountering him but even absent that, it would be unreasonable to expect the claimant as a very young man to relocate. He would be absent family support and has no previous work experience. The evidence is that he lacks "maturity and life skills". As to Article 8 of the ECHR, he should succeed under the Immigration Rules because he satisfied the requirements of paragraph 276 ADE (1)(vi) of those Rules.

6. At the hearing I noted that Mr Jagadeshm's skeleton argument contained references to a number of items of background country material where those items had not themselves been produced. I thought there might be some possible unfairness in such circumstances, if I were not to give Mr Diwnycz an opportunity to read and comment upon those items. Accordingly, after the hearing, I issued directions facilitating the making of such comments and a reply to any comments which might be made. But I have heard nothing more. I have assumed, therefore, that the Secretary of State does not have any further comments to make. In view of that, there is simply nothing for Mr Jagadeshm to reply to. I have, therefore, decided the appeal on the basis of the material before me.

7. I shall turn, first of all, to the question of sufficiency of protection. As is well known, for there to be a sufficiency of protection it is not required that there be a system in place which guarantees absolute protection. Such would be unrealistically. What is required, then, is protection to a practical standard which takes account of the duty a state owes to all of its own citizens.

8. The Secretary of State has, as indicated, accepted a history of physical abuse being directed towards the claimant by his father. It has not been argued on behalf of the Secretary of State that, if the claimant were to return to his home area even if not returning to the actual family home, the antipathy his father feels towards him would be diminished. As to the willingness or capability of the authorities to assist the claimant in such circumstances, I have asked myself what I can take from applicable country guidance case law. Mr Jagadeshm in his skeleton argument and oral submissions, sees support for the contention that there would not be a sufficiency of protection in what was said in the country guidance cases of *AM and BM (Trafficked women) Albania CG* [2010] UKUT 80 (IAC) and *TD and AD (Trafficked women) CG* [2016] UKUT 00092 (IAC). Of course, as the case names suggest, those cases were concerned with claimants who had been trafficked and who are female. Those cases are not, therefore, directly on point. But that is not to say I cannot derive some assistance from what was said in those cases.

9. In *AM and BM* it was said that in the context of a risk of persecution which might be faced by a trafficked female, at the hands of her family members, "there is little evidence that the state would intervene, particularly in the north of the country". In *TD and AD* it was said that with respect to trafficked women there was "in general a Horvath-standard sufficiency of protection, but it will not be effective in every case". What seems to me to be the relevant indications in those cases is that there is a system in place for the detection and apprehension and punishment of violent offenders but that there is or at least has historically been a

reluctance on the part of the authorities to intervene in family issues. Because the cases are focused upon the particular concerns of trafficked women I do not think I can take anything more from them in terms of the guidance they give to me in the context of my decision in this appeal.

10. As to the background country material, the Secretary of State, in the detailed written decision of 30 November 2017, has referred to a lot of quite generalised information regarding the way in which the law enforcement services operate. What is said does acknowledge shortcomings with respect to corruption and a shortage of resources.

11. The claimant's representatives have produced background country material concerning the way in which the authorities operate in Albania and some further documentation of that sort is referred to and highlighted in Mr Jagadeshm's skeleton argument. A report of 2 December 2016 produced by the Refugee Documentation Centre (Legal Aid Board, Ireland) relied upon various sources which demonstrated that domestic violence remained a serious concern in Albania as did corruption within the police force. An Albanian Helsinki Committee report produced on 17 December 2006 (and therefore quite dated) talked of hundreds of thousands of children being subjected to abuse within the family and in schools. It was said that violence against children remained a major problem in Albania but that violence towards children was not prohibited by law. A United Nations Childrens Fund report of 1 June 2016 indicated that violence remained a daily reality for many children and adolescents in Albania. It was said that in 2015 the Albanian police had registered 1,167 crimes against children. A Freedom House report of 28 May 2018 observed that domestic violence remained a serious concern. A Human Rights in Democracy Centre report released on a date in 2018 talked of a lack of support for victims of domestic violence including women, children and the elderly. A Legal Aid Board report of 26 June 2018 talked of there being an inclination to preserve the unity of family at all costs and suggested that that might explain what were said to be "disturbing failures in the procedure in issuing protection orders for children".

12. Of course, the claimant is now an adult albeit only just. But it does not follow that simply because he has attained the age of eighteen he cannot be a potential victim of domestic violence or that greater protection will be afforded to him by the authorities than would have been the case had he still been a child. I accept that there is an operating system in Albania which is capable, if its potential is reached, of affording protection for victims of domestic violence be they children, adolescents, trafficked women or elderly individuals. But I conclude on the basis of the material currently before me (without making any findings which are in any sense binding upon other tribunals) that this claimant in his particular circumstances, if he were to be returned to his home area, would not have a sufficiency of protection available to him. That is because the material shows that the mechanisms which are in place are not yet effectively operating in such a way as to afford him a sufficient level of protection to reach the Horvath standard. That, I stress, is a view which I have reached on the basis of the material before me. It might be that had there been different material in front of me I would have reached a different view.

13. My having concluded matters in the claimant's favour with respect to sufficiency of protection I must now go on to consider the question of internal flight. As to that, I accept, as Mr Jagadeshm points out, that Albania is a relatively small country with a relatively small population. But, that said, according to the Home Office country policy and information note of July 2017, it covers an area of 28,748 square kilometres, has twelve counties, thirty-six districts and sixty-five municipalities and has a population in excess of three million people.

14. The first consideration with respect to internal flight is whether the claimant would be safe if he did relocate away from his home area. The relatively small size of the country and the relatively small size of its population, therefore, are matters of relevance. I note references in *AM and BM* which Mr Jagadeshm highlights in his skeleton argument, to the effect that the country is small. The Upper Tribunal, in that case, referred to evidence given by one Dr Schwandner-Sievers to the effect that “it is not possible to live somewhere without being known”, due to family links. But the evidence is to the effect that the claimant does have only one enemy or, at least, only one who might be motivated to harm him. There is nothing to suggest that the claimant’s father has any particular connections which will aid him in tracking down the claimant even if he would actively want to and, indeed, there is nothing to suggest that there is any mechanism in place which would lead to his knowing of the claimant’s arrival back in Albania if the claimant went to live away from the home area. Further, the chances of the claimant’s father happening upon the claimant must be limited. I have concluded, therefore, notwithstanding the small geographical area and the relatively small population, the claimant would be able to safely relocate. That, though, is not the end of the matter because I must now go on to ask myself whether it would be reasonable or put another way unduly harsh to expect the claimant to so relocate.

15. As to that, the claimant is a young man. There is nothing to suggest that he is anything other than fit and healthy and there is nothing to suggest that he would be incapable of performing, for example, physical work such as manual labour. He has received education in Albania up to the age of sixteen (see his answer to question 22 in his substantive asylum interview). Such education might equip him to take on various employment tasks and, as a minimum, it cannot be said that he is an uneducated individual. Of course, being from Albania, he speaks Albanian. Since he has lived most of his life there, he will be used to Albanian society and relevant social mores.

16. Mr Jagadeshm stresses that although the claimant is no longer a minor, he is, nevertheless, very young. That is so. I accept that there is no magic in a person’s eighteenth birthday which effectively converts, of itself, a child to an adult. But speaking generally a person who is aged eighteen years might be better equipped than a person who is aged, for example, sixteen years, in the context of settling to life in a new location.

17. It is pointed out on behalf of the claimant that, even though he has now attained the age of eighteen, he continues to receive what is described by a social worker, Ms K Monday in a letter of 14 November 2018 as “a high level of support”. It is said in that letter, that he has never lived alone though he has now been moved to what is described as “semi-independent living with support along with another young person who he made friends with at his previous placement”. I have carefully considered everything which has been said in that letter. It is relied upon as evidence that he would experience difficulty if living alone in Albania. But there is nothing in the letter which amounts, on my reading, to a positive assertion that the claimant is not capable of living alone. The mere fact that he has not done so previously does not mean he cannot. It is argued on behalf of the claimant that he would experience difficulty in obtaining employment in Albania. Reference is made to a European Commission Albania 2016 report which indicates that in 2015 the unemployment rate was running at 17.1 % and that unemployment remained high amongst certain groups including women, young people and persons with disabilities. Of course, the claimant would fall into the “young people” category. I would accept that the unemployment rate does appear to be troublingly high. But it also seems clear that the percentage of the workforce in employment is greater than the percentage of the workforce not in employment. The claimant, as I have

said, is on the face of it, healthy. He has had something of an education. It may be difficult for him to find employment but I would conclude, on the material before me, that he would have reasonable prospects of being able to do so.

18. As to freedom of movement within Albania, it is said in the Country Policy and Information Note of July 2017 that the constitution and the law provides for freedom of internal movement (see paragraph 2.3.1 of that Note). The US State Department 2016 Human Rights Practices Report reiterates that the law provides for freedom of internal movement but adds that in order to receive government services, individuals moving within the country must transfer their civil registration to their new community of residence and prove the legality of their new domicile through property ownership, a property rental agreement, or utility bills. On the face of it, it might be thought to be difficult for a new returnee to Albania to do that. A UK Home Office report of 25 July 2017 contained within the claimant's original bundle, contains information indicating that a degree of assistance is provided to returnees in order to facilitate their return (see page 34 of that bundle). Perhaps more significantly, reference is made in that report to information obtained by the British Embassy in Tirana to the effect that returnees are required to register in an employment office in order to enable them to access social state support. It is also indicated that the various municipalities in Albania have housing offices where "returned citizens who do not have accommodation can register to benefit from the status of a homeless person and subsequently to benefit social housing" (see paragraph 35 of the same bundle).

19. In putting all the above together and in bearing in mind that there clearly is some assistance facilities in place for returnees, I would conclude that the claimant would be able to relocate and, with that assistance, circumvent any administrative or procedural difficulties with respect to the transfer of his civil registration should that be necessary. The availability of a degree of state support and possible assistance with respect to housing is also something which would make relocation less problematic.

20. I have concluded that it would not be unduly harsh or unreasonable to expect or require the claimant to take advantage of an internal flight alternative within Albania. That means his claim to be entitled to international protection is not made out.

21. I now turn to the possible application of Article 8 of the European Convention on Human Rights (ECHR). It was argued before me that the claimant should succeed under paragraph 276(ADE)(1)(vi) of the Immigration Rules because there would be very significant obstacles to his integration into Albania. But Mr Jagadesham, upon inquiry, confirmed that he did not seek to rely upon Article 8 of the ECHR outside the Rules. As to the very significant obstacles test I accept that what is called for is a broad evaluative judgment. But the various matters which have caused me to conclude that it would not be unreasonable to expect the claimant to internally relocate, are (whilst the test is not identical) of relevance to my broad evaluative consideration. The claimant is familiar with life in Albania. He speaks an appropriate language. I have concluded that he will have reasonable prospects of obtaining some employment and, if he might need it, of obtaining some state support and some degree of assistance in reintegrating himself. In the circumstances I would conclude that he does not, in fact, come close to demonstrating that he can benefit from paragraph 276(ADE).

22. In light of the above, in remaking the decision, I have decided to dismiss the claimant's appeal from the Secretary of State's decision of 30 November 2017.

23. Finally, I am asked to direct anonymity. Mr Jagadesham says that I should do so “in light of the sensitivity of matters raised in this case, including past (accepted) domestic abuse”. I am not wholly convinced that the circumstances justify anonymity but Mr Diwnycz did not seek to argue against it and, on balance, I suppose the claimant is a very young man and is entitled to his privacy. So, I have decided to grant that request.

Decision

The decision of the First-tier Tribunal has already been set aside. In remaking the decision, the Upper Tribunal dismisses the claimant’s appeal from the Secretary of State’s decision of 30 November 2017. The appeal is dismissed on international protection grounds and on human rights grounds.

Signed: Dated: 2 May 2019

Upper Tribunal Judge Hemingway

Anonymity

I have decided to grant anonymity to the claimant. I have done so pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Accordingly, no report of these proceedings shall identify the claimant or any member of his family. The grant of anonymity applies to all parties to the proceedings. Failure to comply may lead to contempt of court proceedings.

Signed: Dated: 2 May 2019

Upper Tribunal Judge Hemingway

To the Respondent
Fee award

No fee is payable. Accordingly, there can be no fee award.

Signed: Dated: 2 May 2019

Upper Tribunal Judge Hemingway