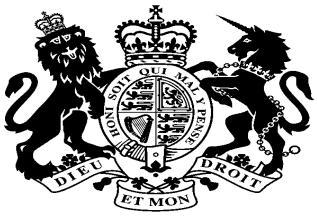

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09433/2018

THE IMMIGRATION ACTS

On the papers on 7 July 2020 **Decision & Reasons Promulgated On 21 July 2020**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

AE
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

ERROR OF LAW FINDING AND REASONS

1. On 5 December 2019 First-tier Tribunal Judge Hoffman dismissed the appellant's appeal on protection and human rights grounds.
2. Permission to appeal was refused by a judge of the First-tier Tribunal but granted on a renewed application by a judge of the Upper Tribunal on 11 March 2020, the operative part of which is in the following terms:

> "Permission is granted on limited grounds.
>
> Ground 1: the challenge to the Judge's assessment of the medical report is selective to the point of being misleading. The judge set out at [40] to [42] cogent reasons for attaching a little weight to the report which are not limited to an assessment of when the appellant developed PTSD. The observation made at [42] that the doctor was not in a position to compare how the appellant presented is well made, as is the point that the doctor did not consider other factors might have contributed to the diagnosis. Given in any event the self-direction at [37] that it was only sufficiency of protection and

internal relocation that were in issue, it is not arguable that such an error is in any event material.

Grounds 2 and 3: it is arguable that the Judge erred in his assessment as to the availability of support for the appellant and in applying an incorrect burden of proof at [62] as is averred at [14].

Ground 4: it is arguable that the Judge erred in his approach to whether the appellant is a member of a particular social group.

Permission is therefore granted on grounds 2 to 4 but not on ground 1."

3. In light of the Covid-19 pandemic directions were sent to the parties on 21 April 2020 advising them that the Upper Tribunal had reached a provisional view that it will be appropriate to determine the question of whether the First-tier Tribunal decision involved the making of an error of law and, if so, whether that decision should be set aside on the papers. Specified time periods were provided to enable the parties to comment upon this proposal and to provide any further submissions they wish to make in support of their case. The appellant's representative filed submissions dated 14 May 2020 the respondent's representatives a response dated 27 May 2020. The expiry date for the period in which further submissions could have been made was 2 June 2020 with no further submissions having been received within that period.
4. The Overriding Objective is contained in the Upper Tribunal Procedure Rules. Rule 2(2) explains that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues.
5. Rule 2(4) puts a duty on the parties to help the Upper Tribunal to further the overriding objective; and to cooperate with the Upper Tribunal generally.
6. Rule 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008 provides:

'34. —

(1) Subject to paragraphs (2) and (3), the Upper Tribunal may make any decision without a hearing.

(2) The Upper Tribunal must have regard to any view expressed by a party when deciding whether to hold a hearing to consider any matter, and the form of any such hearing.

(3) In immigration judicial review proceedings, the Upper Tribunal must hold a hearing before making a decision which disposes of proceedings.

(4) Paragraph (3) does not affect the power of the Upper Tribunal to—

(a) strike out a party's case, pursuant to rule 8(1)(b) or 8(2);

(b) consent to withdrawal, pursuant to rule 17;

(c) determine an application for permission to bring judicial review proceedings, pursuant to rule 30; or

(d) make a consent order disposing of proceedings, pursuant to rule 39, without a hearing.'

7. The appellant's representative submits the matter is not suitable for determination on the papers for the reasons set out at [2 – 3] of the submissions of 14 May 2020 which are in the following terms:

> "2. Pursuant to paragraph 5 of those directions the Appellant submits that this matter is not suitable for determination on the papers as suggested in paragraph 2 of the directions.
>
> a. In bringing this appeal the Appellant requested an oral hearing, the Respondent has not complied with the Rule 24 procedure and their view on the need for an oral hearing is not therefore known, nor is their response to the Grounds of Appeal. Without this it is difficult to judge whether the matter can be fairly determined on the papers.
>
> b. The Appellant submits that a hearing is unnecessary if the Respondent concedes that the First-tier Tribunal determination contains a material error of law and that the decision should be set aside, and the Tribunal agrees with those concessions. It is further submitted that a hearing is unnecessary if the Tribunal is minded to find that there is an error of law and set aside the determination.
>
> c. In any other scenario, the Appellant maintains that a hearing is necessary:
>
> i. The Appellant notes that the matter was previously listed for a hearing and the current global health crisis does not, in itself, justify a departure from that decision where facilities are available to facilitate a decision without breaching government advice on social distancing, or otherwise placing the parties and the Tribunal at risk. It is submitted that the issues identified at paragraph 2 could be determined by a remote hearing utilising appropriate technology.
>
> ii. The Appellant is unaware of the Tribunal's view in respect of the grounds and of any concerns the Tribunal has. Nor is there provision within the directions for these to be made known to the parties. In *Smith v Parole Board* [2005] UKHL 1, Lord Bingham cited a US decision of Brennan J in *Goldberg v Kelly* 3997 US 254, 269 (1970):
>
> > "*Moreover, written submissions do not afford the flexibility of oral presentations; they do not permit the recipient to mould his argument to the issues the decision-maker appears to regard as important. Particularly where credibility and veracity are at issue, […] written submissions are a wholly unsatisfactory basis for decision. […]*"
>
> iii. A hearing could enable the parties to reach an agreement."

8. At [3] the appellant's representative states if the Tribunal is minded to determine the matter on the papers further submissions are made in respect of the grounds of appeal in relation to which permission has been granted.
9. The Secretary of State's position at [2] of the response is that she does not contend that in this case it is necessary to have a further hearing to determine the question of whether the FTT erred in law.

10. I find that on the facts of this case it is appropriate to exercise the discretion conferred by rule 34 by concluding that it is appropriate in all the circumstances for the question of whether the Judge erred in law in a manner material to the decision to dismiss the appeal to be determined on the papers for the following reasons:

    a. In considering what procedural fairness in the present context requires it is not made out that the appellant will be denied a fair hearing if the matter is determined on the papers.

    b. The submission relied upon by the appellant refers to a selective quote from the judgement of the House of Lord's in Smith v Parole Board. The full paragraph in which the abbreviated version appearing in the appellant's representative's submission appears is as follows:

> 31. While an oral hearing is most obviously necessary to achieve a just decision in a case where facts are in issue which may affect the outcome, there are other cases in which an oral hearing may well contribute to achieving a just decision. The possibility of a detainee being heard either in person or, where necessary, through some form of representation has been recognised by the European Court as, in some instances, a fundamental procedural guarantee in matters of deprivation of liberty: *De Wilde, Ooms and Versyp v Belgium (No 1)* (1971) 1 EHRR 373, para 76; *Winterwerp v The Netherlands* (1979) 2 EHRR 387, para 60; *Sanchez-Reisse v Switzerland* (1986) 9 EHRR 71, para 51; *Waite v United Kingdom* (Appn No 53236/99, 10 December 2002), para 59. Although ruling in a very different legal context, the Supreme Court of the United States, in a judgment delivered by Brennan J in *Goldberg v Kelly* 397 US 254, 269 (1970) helpfully described the value of an oral hearing:
>
> > "Moreover, written submissions do not afford the flexibility of oral presentations; they do not permit the recipient to mold his argument to the issues the decisionmaker appears to regard as important. Particularly where credibility and veracity are at issue, as they must be in many termination proceedings, written submissions are a wholly unsatisfactory basis for decision. The second-hand presentation to the decisionmaker by the caseworker has its own deficiencies; since the caseworker usually gathers the facts upon which the charge of ineligibility rests, the presentation of the recipient's side of the controversy cannot safely be left to him. Therefore, a recipient must be allowed to state his position orally. Informal procedures will suffice; in this context, due process does not require a particular order of proof or mode of offering evidence …"

    c. The case of Goldberg v. Kelly, 397 U.S. 254, relied upon by the appellant's representative is not a case in which the question being considered was whether a judge had made an error of law material to a decision but rather a case in which the Supreme Court of the United States ruled that the Due Process Clause of the Fourteenth Amendment to the United States Constitution requires an evidentiary hearing before a recipient of certain

government welfare benefits can be deprived of such benefits. The paragraph in which the above quote has been extracted by the appellant's representative appears is much greater, including the following:

> "The opportunity to be heard must be tailored to the capacities and circumstances of those who are to be heard. It is not enough that a welfare recipient may present his position to the decisionmaker in writing or second-hand through his caseworker. Written submissions are an unrealistic option for most recipients, who lack the educational attainment necessary to write effectively and who cannot obtain professional assistance. Moreover, written submissions do not afford the flexibility of oral presentations; they do not permit the recipient to mold his argument to the issues the decisionmaker appears to regard as important. Particularly where credibility and veracity are at issue, as they must be in many termination proceedings, written submissions are a wholly unsatisfactory basis for decision. The second-hand presentation to the decisionmaker by the caseworker has its own deficiencies; since the caseworker usually gathers the facts upon which the charge of ineligibility rests, the presentation of the recipient's side of the controversy cannot safely be left to him. Therefore, a recipient must be allowed to state his position orally. Informal procedures will suffice; in this context, due process does not require a particular order of proof or mode of offering evidence. *Cf.* HEW Handbook, pt. IV, § 6400(a).
>
> In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses. *E.g., ICC v. Louisville & N. R. Co.,* 227 U. S. 88, 227 U. S. 93-94 (1913); *Willner v. Committee on Character & Fitness,* 373 U. S. 96, 373 U. S. 103-104 (1963). What we said in *Greene v. McElroy,* 360 U. S. 474, 360 U. S. 496-497 (1959), is particularly pertinent here:
>
> > "Certain principles have remained relatively immutable in our jurisprudence. One of these is that, where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment. … This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, … but also in all types of cases where administrative … actions were under scrutiny."
>
> Welfare recipients must therefore be given an opportunity to confront and cross-examine the witnesses relied on by the department.

d. This judgement, whilst from another common law jurisdictions and persuasive only and not binding upon a UK Court or Tribunal, reflects a principle of the laws of England and Wales that a person has a right to appear and answer any charge against them unless there are good reasons why this should not be the case. It is also a decision assessing the right of individuals in what can be described as "normal" circumstances absent the arrangements that have had to be put in place as a result of the Covid 19 pandemic. The judgement also specifically refers to a particular court user and their ability to engage in and present their case. The subjective element is particularly evident by the reference to "*The opportunity to be heard must be tailored to the capacities and circumstances of those who are to be heard. It is not enough that a welfare recipient may present his position to the decisionmaker in writing or second-hand through his caseworker. Written submissions are an unrealistic option for most recipients, who lack the educational attainment necessary to write effectively and who cannot obtain professional assistance.*" The circumstances of this case, at this stage of the proceedings, is that the facts have been found by the Judge and so it is not a case of written submissions being sought to enable the Tribunal to ascertain the factual position as it was in the case before the Supreme Court in United States of America. It is also the case that the written submissions have not been produced by the appellant as an individual but by an experienced legal representative, in this case Karen Reid of the 36 Group and it is not made out that an experienced professional barrister in this field lacks the necessary capacity or academic/educational achievement to be able to set out in submissions what she would wish to say in an oral hearing. Indeed both the grounds of appeal together with the submissions were drafted by the same person who represented the appellant before the Judge.

e. The assertion a hearing will be required to enable the parties to have the opportunity to reach an agreement is noted but nothing indicates that such an opportunity did not already exist by remote contact on the telephone or other means before the advocates outside the Tribunal in any event. It also appears having read the respondent's replies that there will be no prospect of an agreement even if an oral hearing occurred.

f. Although it had been the practice to have oral hearings on error of law appeals this is not enshrined in the Rules; the only mandatory requirement for a hearing in rule 34 is in relation to immigration judicial review claims where the Upper Tribunal's decision would dispose of the proceedings. Paragraph 4 of the Practice Direction contains a provision that if a disposal on the papers did not accord with the overriding objective there should be a hearing, indicating that in appropriate cases where the facts warrant the same an oral hearing can be arranged. It has not been made out this is such a case.

g. The fact the case may have been previously listed for a Initial Hearing may be factually correct but that was not because it was determined that was the only medium by which the question of whether the Judge had made an error

of law could be determined. Prior to the Covid-19 pandemic that was the normal procedure once permission to appeal had been granted. At that time facilities for determining questions by other means, including on the papers, had not been explored in detail by HMCTS although remote hearings were becoming more common within different jurisdictions. It is also the case that case management powers enable a court or tribunal to decide upon the method of disposal in accordance with the exercise of the discretion available to it.

h. Although the appellant expresses a preference for an oral hearing the pleadings failed to identify any procedural irregularity in considering this issue on the papers sufficient to deny the appellant a fair hearing in accordance with the overriding objectives if the Tribunal proceeds in this manner.

Error of law

11. The appellant is a citizen of Albania born on 20 June 1999. Having considered the documentary evidence and having had the benefit of seeing and hearing oral evidence being given the Judge sets out findings of fact from [36] of the decision under challenge.
12. At [37] the Judge writes: "*… However, by agreeing to focus on sufficiency of protection and internal relocation, it is clear that Ms Patel, on behalf of the respondent, was willing to take the appellant's claim to face a risk on return at its highest. Therefore, in the light of the parties' joint position at the hearing, I confine my consideration below to facts relevant to sufficiency of protection and internal relocation. This necessitates a consideration of the medical evidence.*"
13. The Judge considered the evidence relied upon by the appellant in connection with mental health issues between [38 – 44] before arriving at the following conclusion:

> "43. Ms Patel submitted that the fact that Dr Hajioff had only met the appellant once lessened the weight I could attach to his conclusions. In response, Ms Reid submitted that Dr Hajioff is a sufficiently qualified professional who would have been able to diagnose the appellant after only one meeting. On careful consideration, I find that in the absence of any evidence to explain why social services or anyone else involved in the appellant's case had failed to pick up on the apparently obvious signs of mental health problems, I do find that the fact that Dr Hajioff has only met the appellant on one occasion, very close to this appeal hearing, undermines the weight I can attach to his conclusions.
>
> 44. I therefore accept Ms Patel's submission that I should attach only little weight to Dr Hajioff's report."

14. The appellant sought to challenge the Judge's findings in relation to the medical evidence in Ground 1 but permission to appeal was refused by the Upper Tribunal.
15. The Judge considers sufficiency of protection between [45 – 62] concluding between [60 – 62]:

> "60. Therefore, it appears that there is support in Albania that, in principle, the appellant may be able to access. But before a person can avail

themselves of the support programmes they must be recognised as a victim of trafficking in Albania. Page 91 of the AYLOS report quotes a USSD report from 28 June 2018. That says that of those victims repatriated from abroad, "*only four individuals were identified as potential victims of trafficking in 2018 and none in 2017*" [AB/372]. The AYLOS report does, however, presented multiple conflicting accounts of how the Albanian NRM operates. The overall impression is that there is a desire by the Albanian authorities to tackle the problem of human trafficking, but this is hampered by issues of funding and proper training. However, page 96 of the AYLOS report quotes a joint report by the University of Bedfordshire, IOM and the Institute of Applied Social Research which says that "*the focus on women and children has been criticised for leaving the trafficking of men poorly understood and overlooked resulting in a lack of support and assistance for trafficked men*". On page 97, there is a quote from a 2015 report by Different and Equal, which says that "*while trafficked males are increasingly being identified as such, [it is] still lagging in the formal identification procedure*"; and that the "*[f]ailure to identify men as VoT's is linked to social norms of vulnerability - that men are strong and cannot be victim*".

61. Having given careful regard to the above, and apply the lower standard of proof, I find it even though the USSD report shows that in recent years few men repatriated from abroad have been accepted as victims of trafficking by the Albanian NRM, it does not necessarily follow that the appellant would not be accepted. The evidence is clear that an ever increasing number of men been provided with financial assistance by the state and placed into accommodation (albeit not in a sheltered) and that Different in Equal provides them with counselling, legal advice, medical services, vocational training and assistance with jobseeking. I therefore find that the appellant could avail himself of the assistance of the state and/or an NGO such as Different and Equal who could help him readjust back into life in Albania and prevent him from falling back into the hands of a criminal gang or his abusive father.

62. I therefore turn to the second point: whether the appellant can seek the protection of the Albanian Police. Here, the appellant's case is that the police are too corrupt to help him. However, in my view, his fears about the reach of the criminal gangs are based on supposition. He does, however, rely on Dr Korovolis's report where, at page 10, he writes that the Albanian police forces poorly trained, unprofessional, and corrupt. However, even if the local police are corrupt, there is no evidence that the particular criminal gang that the appellant worked for in Klos sufficient to reach all means to bribe police offices anywhere the appellant goes in Albania. Furthermore, while the USSD report acknowledges that corruption remains a problem in the Albanian police, it also says that "*the government has mechanisms to investigate and punish abuse and corruption*". For the reasons set out above, I find that Dr Korovolis's conclusion that the appellant would be unable to obtain any assistance from the Ombudsman is unsupported by any sources. Therefore, while the Albanian police are far from perfect, the objective evidence nevertheless demonstrates a

sufficient level of protection that meets the test set out in the case *Horvath v Secretary of State for the Home Department [2001] 1 A.C. 486*."

16. Ground 2 asserts the Judge erred in law in finding that there will be support available to the appellant as a male victim of trafficking. The original Grounds of Appeal asserted:

> "4. The Appellant's contention is that, owing to his particular vulnerabilities, he would be at risk of re-trafficking on return to Albania and that there would not be sufficient protection for him. The Judge has found that the Appellant could be identified as a victim of trafficking by the NRM in Albania and that consequently he would be able to access support, capable of providing adequate protection.
>
> 5. The Appellants grounds of appeal have highlighted the evidence contained within the report "*Albania: Trafficked Boys and Young Men* which supports the contention that there is an absence of support and that the limited support that is available will be an accessible and inadequate …"

17. The Secretary of State's position is that the appellant's challenge is, in reality, no more than disagreement with the Judge's assessment as to whether support will be available to the appellant on return to Albania. It is submitted that what is unequivocally clear is that the Judge considered in very great detail the issue between [45 – 61] and did so in an entirely balanced fashion noting factors that both supported such a conclusion and those that undermined it.
18. The original Grounds of appeal against the Judge's decision are in the following terms:

> "9. At paragraph 58 of the determination the Judge finds that the Appellant would not be accommodated in one of the secure shelters for victims of trafficking. The Judge nonetheless finds that there would be support for the Appellant. He relies on evidence contained in a report prepared by ASYLOS "*Albania: Trafficked Boys and Young Men"* which he states (at paragraph 59) establishes that there are charities in Albania paying for rented flats for male victims of trafficking. It is submitted that this ignores the evidence in the AYLOS report that this provision is inadequate:
>
> "*the absence of adequate safe accommodation for boys and young man was also highlighted by the Mary Ward Loretto Foundation*:
>
> "*I did some research and I found only a day service and they can stay there and access a programme that still there are no shelters like for women and girl victims. Male victims only have day centres where they can have trainings, food, clothes and very low level of services but not a residential centre. In all the centres where they accept VOT they do not accept boys. Some of the centres like D&E for rent but very few and very difficult to find the victims who accept to go in this flat. They have to move - they don't have budget to support him during this process of rescuing him, to give him a flat or a place to live – education - so they always move.'*
>
> *Source: Mr Alfred Matoshi, Mary Ward Loretto Foundation, interview record, January 2019.*
>
> 10. The ASYLOS report also identifies that just 21 male victims of trafficking have benefited from this support. The evidence within the report is also

inconsistent as to whether such support is available and whether it is adequate in terms of both provision and capacity – see, for example, the interview with Professor Dr. Edlira Haxhiymeri at pages 269 – 279 (in particular the answers at point 8). The judge has not taken this into account.

11. The Judge also relies on reference in the ASYLOS report to an Albanian law requiring Victims of trafficking to be given €21.50 per months, however, the report specifically states that this is insufficient to allow them to live independently (see page 151 of the report).

12. It is submitted that in the circumstances the evidence before the Judge does not justify the conclusion reached at paragraph 61 that *"even though the USSD report shows that in recent years few men repatriated from abroad have been accepted as victims of trafficking by the Albanian NRM, it does not necessarily follow that the appellant would not be accepted"*. It is submitted that, contrary to the Judge's finding, the evidence is far from clear.

19. The material before the Judge showed that a person claiming to be a victim of trafficking will be assessed in relation to the same in Albania. It is not known whether, despite a person having been accepted as a victim of trafficking by an organisation outside Albania, those on the ground in Albania consider themselves bound by such a conclusion or reassess the issue for themselves in light of their far more detailed local knowledge of the situation within Albania.
20. The Judge does not find that every person identified as a victim of trafficking will receive the same standard of support as they may in the United Kingdom. The Judge clearly identifies and discusses what is described as a limitation of those identified as potential victims of trafficking and the support the ASYLOS states may not be available to them.
21. The Judge clearly factored the points relied upon by the appellant into the assessment of the overall merits of this aspect of the appeal. There is no country guidance decision or country material of such weight to support a finding that no male victim of trafficking will receive sufficient support in Albania. The Judge specifically finds an assertion the appellant would not receive assistance from the Ombudsman to be unsupported and finds that protection is available to the Horvath standard. The Judge's findings are adequately reasoned and whilst the appellant disagrees with them by reference to a report specifically considered by the Judge, he fails to establish that the Judge's findings that support and the sufficiency of protection will be available to him on return is infected by material legal error.
22. Even if €21.50 is not sufficient to enable a person to support themselves without more it was not made out the appellant will be unable to work. As noted by the Judge the appellant will be able to obtain financial support and help with finding accommodation and that the NGOs that exist could provide him with counselling as well as vocational training and assistance with job seeking. These findings have not been challenged or shown to be contrary to the evidence available to the Judge.
23. Ground 3 asserts the Judge misapplied the burden and standard of proof at [62] where it is alleged the Judge found that applying the lower standard of proof, there would be support for the Appellant and he will be identified as a victim of trafficking. It is submitted that the burden falls on the Appellant to establish his

claim on the lower standard of proof, it is not the case, as the Judge has inferred, that evidence which is contrary to his claim, providing it meets the lower threshold, will defeat his claim.

24. The appellant asserts that if Grounds 2 and 3 are made out the Judge's assessment of internal relocation is flawed.
25. The respondent's position in relation to this ground is that the Judge did not place the burden upon the appellant at all although as to the standard of proof the respondent would concede within the context of the availability of support that the Judge erred in law in inverting the standard of proof. It is not accepted that this is, however, material as a reading of the determination as a whole shows the Judge clearly envisaged the appellant will be able to internally relocate to Tirana meaning any such error would not be material.
26. The Judge sets out the correct legal self-direction in relation to the burden and standard of proof and identifies all the available evidence that was made available in support of the conclusions he reached. The assertion that at [62] the Judge misapplied the burden and standard of proof does not establish arguable material legal error. The Judge examined country information relevant to an issue relied upon by the appellant but did not find when considering all the evidence in the round that the appellant has discharged the burden of proof upon him to the required standard of proof to show he had any such entitlement. The standard of proof referred to by the appellant is the "lower standard" and if evidence exists contrary to his claim, which the Judge takes together with the points relied upon by the appellant, shows the appellant cannot make out his claim that is, arguably, the normal application of the relevant test. The Judge having given the weight that was considered appropriate to the evidence found the appellant has a sufficiency available to him in Albania. It is not made out that conclusion is infected by a material misapplication of the burden and standard of proof. [62] is set out above.
27. In relation to the question of internal relocation, the Judge considers this between [64 – 65] of the decision under challenge concluding:

> "64. For the reasons set out in paragraph 51 above, I attach little weight to Dr Korovilas's conclusions that the appellant would be unable to relocate to another part of Albania. There is no material that support his claim that the appellant will be unable to find accommodation all work in the absence of family support; nor is there any material that he cites would likely be able to track the appellant down to any part of Albania - let alone that they would even be aware that he had returned to the country after 5 years away.
>
> 65. I accept Ms Patel's submission that the appellant is now an adult with and could be expected to relocate to a different part of Albania (including Tirana) and find accommodation and a job on return. That it is likely that the appellant could obtain some financial support and help with finding accommodation as a victim of trafficking, and that NGOs exist but could provide him with counselling and as well as vocational training and assistance with job seeking."

28. The appellant fails to establish that this finding is outside the range of those reasonably available to the Judge on the evidence.

29. Ground 4 asserts the Judge erred in law in finding that male victims of trafficking in Albania are not a Particular Social Group (PSG).
30. The Judge considered the question of a Convention reason between [66 – 72] noting the appellant's representatives submission that as a victim of trafficking the appellant shared a common background that cannot be changed with other victims of trafficking and therefore fell within the PSG of a refugee. The Judge referred to the country guidance case of TD and AD which found that trafficked women may well be members of a particular social group on that account alone, but found the appellant's situation to be different from those of the appellants in TD and AD. At [69] the Judge writes *"Moreover, no evidence has been submitted to the tribunal to show that trafficked men are perceived as PSG in that country; in fact, the evidence shows that trafficked men appear to be something of a nonentity in Albania, and that Albania society struggles to accept that men can be victims; e.g., see page 97 of the ASYLOS report [AB/378]. The evidence before me does not show that trafficked men face any form of social stigma are specifically targeted for persecution or serious harm on account of the fact that they have been trafficked.*
31. The appellant's asserts that in SB (PSG, Protection Regulations, Regulation 6) Moldova CG [2008] UKAIT 00002, the Upper Tribunal accepted for the first time that a former Victims of Trafficking can be deemed to be a member of a PSG for the purposes of the Refugee Convention and that this was not restricted to victims of a particular gender.
32. The appellant argues there is not a sufficiency of protection for male victims of trafficking in Albania through the failure to identify or recognise the possibility of such trafficking occurring and there is a clear disparity and the protection offered to male victims of trafficking and female victims. As such male former victims of trafficking are a PSG in Albania and that applying the analysis of the Judge the appellant is at risk because he was trafficked by the gang before and that the persecution is therefore directly linked to the immutable characteristic.
33. The respondent's position set out at [7 – 9] of the submissions of 27 May 2020 in the following terms:

> "7. In respect of ground 4 the SSHD contends that there was no misdirection in law by the FTTJ. He considered this issue between [66 – 71] in the grounds merely disagree with his findings. As to which, insofar as the grounds rely on **SB (PSG, Protection Regulations, Reg 6) Moldova CG [2008] UKAIT 00002**, the Upper Tribunal in that determination expressly stated:
>
> > "56. Accordingly, in our view, and subject to what we say at paragraphs 67 to 74, former victims of trafficking and former victims of trafficking for sexual exploitation *are capable* of being members of a particular social group because of their shared common background or past experience of having been trafficked. However, we emphasise that, in order for "former victims of trafficking" or "former victims of trafficking for sexual exploitation" to be members of a particular social group, the group in question must have a distinct identity in the society in question."
>
> 8. The critical issue, as is clear from the above extract, is that former victims of trafficking *may be* a PSG but whether they indeed are, is a fact sensitive

issue. The SSHD submits that for the reasons given by the Judge, male victims of trafficking from Albania not a PSG. The FTTJ found at [69]:

> "moreover, no evidence has been submitted to the tribunal to show that trafficked men are perceived as PSG in that country; in fact, the evidence shows that trafficked men appear to be something of a nonentity in Albania, and that Albania society struggles to accept that men can be victims; e.g., see page 97 of the ASYLOS report [AB/378]. The evidence before me does not show that trafficked men face any form of social stigma are specifically targeted for persecution or serious harm on account of the fact that they have been trafficked."

9. The finding unquestionably militates against any suggestion that male victims of trafficking are a group that "as a distinct identity in the relevant country, because it is perceived as being different by the surrounding society". On the contrary, Albanian society does not appear to countenance the notion that males can be such a PSG."

34. This issue highlights a material difference between the test to establish whether a person can be a member of a PSG under the Refugee Convention and whether they can under the Qualification Directive. The Geneva Convention relating to the Status of Refugees 1951 provides greater protection than the minimum standards imposed by a literal interpretation of Article 10(1)(d) of the Qualification Directive (PSG). Under the Refugee Convention a PSG is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. Under the Qualification Directive, Article 10 (d) replaces the word "or" with the word "and" creating a cumulative rather than alternative tests.
35. Under the alternative test, as the appellant shares a common characteristic as a male former victim of trafficking, a common characteristic which is innate and unchangeable, he is arguably entitled to be recognised as a member of a PSG even if not perceived as a group by society; which is the additional requirement of the cumulative approach under the Qualification Directive. The finding the evidence does not support the claim that the appellant will be perceived as a member of a particular group, the second element of the test under the Qualification Directive, has not been shown to be outside the range of findings reasonably open to the Judge on the evidence and does not reveal arguable material legal error.
36. However, to ensure consistency between two important protective provisions and in light of the fact the Qualification Directive specifically refers to compatibility with the Refugee Convention, Article 10 (D) should be interpreted by replacing the word "and" between Article 10(1)(d)(i) and (ii) with the word "or", creating an alternative rather than cumulative test.
37. Even if the appellant is able to satisfy the definition of a PSG that does not entitle him to be recognised as a refugee without more. The appellant still needed to establish there is a real risk of persecution for this Convention reason, the Nexus test. In this appeal the Judge finds that even though the appellant faces a real risk of persecution in his home area he has a valid internal flight option and sufficiency of protection.

38. Paragraph 339O of the Immigration Rules, which incorporates the Qualification Directive, states:

> '(i) The Secretary of State will not make:
>
> (a) a grant of asylum if in part of the country of origin a person would not have a well-founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country; or
>
> (b) a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country.
>
> (ii) In examining whether a part of the country of origin or country of return meets the requirements in (i) the Secretary of State, when making his decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.
>
> (iii) (i) applies notwithstanding technical obstacles to return to the country of origin or country of return.'

39. The Judge's findings that there is a part of Albania to which the appellant may reasonably relocate where there is a sufficiency of protection has not been shown to be infected by material legal error and shall stand. They are findings that are adequately reasoned and within the range of those available to the Judge on the evidence. Accordingly no error arises in the dismissal of the appellants protection claim on all grounds.
40. The human rights element is not challenged and those are sustainable findings too for the reasons set out by the Judge.

Decision

41. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

42. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson
Dated the 8 July 2020