



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-000611

First-tier Tribunal No: PA/52223/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 4<sup>th</sup> of June 2024

**Before**

**UPPER TRIBUNAL JUDGE KEITH**

**Between**

**The Secretary of State for the Home Department**

Appellant

**and**

**'AS' (Albania)**  
**(ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr E Benham, Senior Home Office Presenting Officer  
For the Respondent: Ms N Nnami, Counsel, instructed by Sentinel Solicitors

**Heard at Field House on 1 May 2024**

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the claimant (as defined below) is granted anonymity. No-one shall publish or reveal any information, including the name or address of the claimant, likely to lead members of the public to identify the claimant. Failure to comply with this order could amount to a contempt of court. The reason is that the appeal relates to a protection claim.

**DECISION AND REASONS**

1. As this is the Secretary of State's appeal, I will refer to the appellant as the Secretary of State and to the respondent as the claimant, as they were before the First-tier tribunal, to avoid confusion.
2. The Secretary of State appeals against the decision of Judge Tozzi, dated 3<sup>rd</sup> December 2023, in which she allowed the claimant's asylum and human rights claims. The core issue in this appeal is the claimant's claim to fear persecution in

his country of origin, Albania, as someone of Roma ethnic origin and at risk of being trafficked, given his ethnicity and his socio-economic background.

### **The Judge's decision**

3. At §4 of the judgment, the Judge identified the basis of the claimant's claimed risk, which was due to his ethnicity because he is of Roma ethnicity (referred to as 'Gabel'). The Judge recorded that the claimant further claimed he was at risk of being trafficked, given his ethnicity and his social and economic background, and referred to being an asylum-seeking child. The Judge recorded that the claimant also claimed very significant obstacles to integration in Albania, for the purposes of an Article 8 claim. The Judge treated the claimant as a vulnerable witness (§6). The Judge applied the law in place on or after 28<sup>th</sup> June 2022, namely Section 32 of the Nationality and Borders Act 2022, which I do not recite, as there is no suggestion that the Judge misdirected herself on the law. She also referred, in the context of the risk of trafficking, to the country guidance case of TD and AD (Trafficked women) CG [2016] UKUT 00092. The Judge then went on to make findings, which again I do not recite in full, save as to refer to those findings where the Secretary of State has challenged them as being deficient. The parties agreed that the claimant, an Albanian national, arrived in the UK as a minor. Very broadly speaking his family history was problematic. His father in Albania was an alcoholic and the claimant left school at the age of 16 with no work experience and fled Albania, having stolen money from his father to fund his escape. At §23, the Judge recorded the claimant as having been bullied at and outside school. This included verbal and physical abuse, and the claimant believed that he was subjected to this because of his ethnicity as a Roma person and it was known that his father was a 'Gypsy'. The claimant had explained that Roma people were often targeted and there was no support. The Judge recorded that the abuse continued when the claimant travelled outside his community, and included being called names, being hit on the back of the head and slapped. At school he was often threatened that he would be beaten up, so he would stay at home all day. Crucially, the Judge found:

"26. I have taken into account that the appellant was a child at the time these events occurred, which explains the limited detail provided and his focus on events at school. It was plain at hearing that the appellant's concerns were more widespread, as he believed he would be targeted anywhere in Albania because he would be identified as Roma. He feared identification on return, which he considered would place him at risk of harm and social exclusion, particularly from local services, accommodation and employment. At interview he said it would be better to be killed in the UK than to go back. As he had no-one to return to, he was afraid that 'bad people' would take advantage of him. The appellant gave a consistent account about his fears on return."

4. At §27 of the judgment, the Judge referred to external evidence of NGOs who had worked with Roma people in Albania, describing them as particularly vulnerable and in crisis, with prejudice against Roma being widespread. At §27, the Judge specifically referred to a report identifying that 80% of children street begging were Roma or 'Egyptian' and it was very difficult for Roma people to access healthcare and state benefits, which placed them at risk of trafficking and they were one of the most vulnerable groups, with limited access to shelters. The Judge also cited the Country Policy and Information Note: Actors of Protection,

Albania, December 2022, which referred to delays in the police responding. The Judge concluded that the claimant's reluctance to seek help because of police inaction was consistent with country evidence. The Judge found that the claimant had no means of contacting his family anymore and that whilst he had distant family in Durres and Tirana, they would be unable to look after him. At §31, the Judge concluded that the claimant's core account was consistent with the country evidence, and she found him to be a credible witness.

5. Applying the law to the facts, the Judge concluded that the claimant's core account of fear on return, because of the risk of being attacked, taken advantage of and socially excluded, was reliable and therefore he genuinely feared persecution. At §34, the Judge said that she was bolstered in that view by reference to the CPIN in particular, because of the risk to those of Roma ethnicity of being trafficked because of their poor social standing and by reference to TD and AD, in that first, he came from a poor family of Roma origin and second, his level of education was low, limited to schooling up to the age of 16. Given the lack of education and lack of work experience, the Judge found it reasonably likely that the claimant's employment prospects were poor. The Judge also found it reasonably likely that the claimant suffered from emotional trauma noting that he was referred for emotional therapy, which in turn would impact, with the other factors, on his ability to integrate in Albania. The Judge also considered the claimant's relative youth, being aged 17, with no adult life experience and no contact with his family, so that he would return without a support network. At §35, the Judge referred to the limited availability of support for male victims of trafficking and no mechanism for providing support unless Roma people declared their specific status, which few were prepared to do. At §36, the Judge accepted the claimant's account of being verbally and physically assaulted and that was a serious indication of a well-founded fear of persecution in accordance with Rule 339K of the Immigration Rules. At §37, the Judge concluded that, considering those factors in the round, and noting the claimant's unchallenged account that teaching staff failed to provide him assistance when he raised a complaint; and his belief that the police would not assist Roma people, consistent with the CPIN's recording of discriminatory treatment towards Roma people, including a refusal or slowness to act by the authorities, the claimant would not have sufficiency of protection, and that it would be unduly harsh for him to relocate because of a real risk of destitution and the challenges facing the Roma community. The Judge also concluded that the claimant's removal would be in breach of his Article 3 and 8 ECHR rights.

### **The Secretary of State's Appeal**

6. Whilst the Secretary of State's initial application for permission to appeal was refused by the First-tier Tribunal, permission was granted by Upper Tribunal Judge Gill on 22<sup>nd</sup> March 2024. The grounds of appeal are that the Judge erred in failing to provide adequate reasons for why the treatment described by the claimant, which was bullying and domestic neglect, met the threshold required to demonstrate persecution. Whilst there was no challenge to the finding of the claimant's subjective fear of persecution, the Secretary of State argued that it was unclear how it could give rise to an associated risk of persecution, given the fact that the claimant had never been trafficked historically and there was no evidence to support the conclusion that the claimant would be at risk of re-trafficking upon return. It was also unclear on what basis the Judge had found the claimant to have suffered from trauma at §34, when the claimant's evidence regarding his mental health described only stress and anxiety. In essence, the

Judge had speculated and presumed that the claimant would be trafficked. There is a suggestion of a misdirection in law although I pause to observe that nowhere in the grounds is it stated where there is a misdirection, as opposed to what the Secretary of State in fact argues, which is a misapplication of the well-established law to the facts of the case. The Secretary of State further argued that the Article 8 findings were inextricably linked to the protection claim and they were similarly infected by error.

### **The Hearing before me**

#### **The Secretary of State's submissions**

7. Mr Benham reiterated that, whilst it was accepted that the claimant had been bullied, it was a very broad leap to equate this to persecution with state sanction or the absence of support. In principle, it was possible that the absence of support for a discriminatory reason could amount to persecution, as confirmed in the case of R (Shah) v Immigration Appeal Tribunal [1999] 2 AC 629, cited in Horvath v SSHD [2001] 1 AC 489, but the evidence at §23 to §26 did not support the finding of persecution, in particular where there was no evidence that the claimant had actually sought the support of teachers or had gone to the police. Whilst the Judge had relied upon the CPIN at §28 as evidence for the reluctance of police to assist those of Roma ethnicity, there was no evidence that the police declined help the claimant. The Judge's reference at §36 to §339K of the Immigration Rules and past persecutory treatment was also flawed, as school bullying in this case did not amount to persecution.
8. The Judge had then erred in considering trafficking, and in particular, the limited evidence was exemplified at §26, where the claimant had merely claimed to fear 'bad people'. Whilst the Judge had gone on to consider the country guidance case of TD and AD, the claimant had not been trafficked before. Finally, Mr Benham posed the question of how the Judge could reach a conclusion on trauma when there had been no medical assessment and at most, there had been reference in the asylum interview notes to the claimant being referred for emotional therapy. The Judge had erred in supposition that the claimant therefore suffered from trauma.

#### **The Claimant's submissions**

9. Ms Nnami submitted that the Judge's findings were open to her and were adequately reasoned. In response to any initial suggestion by Mr Benham that the case had not squarely been put based on trafficking, the Judge had expressly identified this at §4. She had specifically addressed the factors on the risk of trafficking in TD and AD. In particular, these included the claimant's ethnicity, the risk of his homelessness and destitution in the absence of a support network. Moreover, the trafficking risk was independent of the claimant's previous adverse treatment. Even if the bullying and harassment at school did not amount to persecution, as the Secretary of State contented, that did not detract from the risk because of the factors identified by the Judge. The Judge had cited the country evidence on the high risk of exploitation for children of Roma ethnicity at §§11 and 12. On the Judge's reference to trauma, Ms Nnami suggested that too much had been made of this by the Secretary of State. The Judge had merely reflected the evidence that the claimant had been referred for emotional therapy, which was unsurprising given his young age and the accepted ill-treatment that

he had suffered in Albania and from where he had fled. The Judge was entitled to consider this as a relevant factor in assessing the risk of trafficking.

## **Conclusions**

10. I remind myself of the dangers of 'island hopping' between specific aspects of evidence, (see the case of Volpi v Volpi [2022] EWCA Civ 464). In terms of the adequacy of reasons, I had canvassed with Mr Benham whether in fact he was raising a perversity challenge that it was not open to the Judge to have allowed the protection claim on the evidence before her. He confirmed that he was not, and did not argue that bullying, harassment and discrimination could never amount to persecution, particularly in the context of the case which I have already cited, Shah. On the particular facts of this case, I do not accept that the Judge either misapplied the law to the facts or that the reasons she gave for accepting that the claimant had a well-founded fear of persecution were inadequate. She considered the risk of social exclusion by reference to the claimant's ethnicity and the risk of being attacked. I bear in mind previous adverse attention, which included verbal and physical attacks, outside school. However, importantly, I accept Ms Nnami's submission that the analysis did not depend on prior adverse treatment. Instead at §34, whilst conscious that the claimant did not claim to have been previously trafficked, the Judge was nevertheless entitled to consider TD and AD and the CPIN on the risk of return, in particular the claimant's social status and economic standing from a poor family of Roma origin, who was at risk of destitution, with limited education, a lack of work experience and the need for therapy, all of which would impact on his ability to integrate without a support network. The Judge also had considered the limited support available for victims of trafficking in Albania. The Judge was unarguably entitled to consider the slowness to act by the authorities, in particular because of discriminatory treatment towards those of Roma ethnicity, which meant that there would not be sufficiency of protection. The Judge was also entitled to conclude that in circumstances of societal discriminatory attitudes towards those of Roma ethnic origin and the slowness of the police to act, that internal relocation would have no mitigating effect.
11. As part of this analysis, I do not accept that the Judge impermissibly speculated by finding that the claimant had suffered from emotional trauma. Whilst true it is that there was no medical evidence on the question of trauma, the Judge did not err in supposition by referring to the claimant being referred in the UK for emotional therapy. That referral begged the question of the reason for it, from which it was reasonable to infer that the claimant had a form of emotional vulnerability, not put as high, for example, as PTSD by the Judge, which would add to his risk of trafficking.
12. In the circumstances, and whilst I am very conscious that this is a fact-specific case, I am satisfied that the Judge's conclusions were adequately reasoned and did not amount to a misapplication of the law, to the facts as found.
13. Accordingly, the Secretary of State's appeal fails and is dismissed. The decision of Judge Tozzi stands.

**J Keith**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**23 May 2024**