



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

Appeal Number: AA/02730/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26 October 2015**

**Decision & Reasons Promulgated  
On 30 October 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON**

**Between**

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

Appellant

**and**

**LA**

**(ANONYMITY ORDER)**

Respondent

**Representation:**

For the Appellant: Ms N. Willocks-Briscoe, Senior Home Office Presenting Officer

For the Respondent: Ms S.L. Wass, counsel instructed by Barnes, Harrild & Dyer Solicitors

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of LA, a citizen of Albania against the respondent's decision to refuse his application for asylum and to remove him from the UK.

2. For the purposes of this decision I refer to the parties as they were in the First-tier Tribunal.
3. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order.

### Background

4. The appellant is a citizen of Albania born on 23 August 1996. He entered the United Kingdom clandestinely on 28 June 2013 and claimed asylum on arrival. The respondent refused the appellant's asylum claim on 22 August 2013 and granted him limited leave to remain until 23 February 2014. On 22 February 2014 the appellant applied for further leave to remain and on 6 February 2015 the respondent refused to vary the appellant's leave to remain and decided to remove the appellant by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.
5. The appeal against that decision came before First-tier Tribunal Judge Keane on 30 June 2015. The judge, in a decision promulgated on 10 August 2015, found the appellant credible and allowed the appeal on the basis that the appellant would be at risk on return from the gang for whom he had worked in Albania and the authorities would be unable to protect him.
6. Permission to appeal to the Upper Tribunal was sought and granted on two grounds: firstly that the immigration judge had made perverse findings in making contradictory findings about whether or not there would be a sufficiency of protection available to the appellant. The second ground was that the immigration judge had failed to correctly apply the test in Horvath [2000] UKHL 37 when determining the sufficiency of protection available to the appellant upon return to Albania.
7. Ms Willocks-Briscoe submitted that the judge had made inconsistent findings. At paragraph [18] the judge found that the Albanian authorities are able and willing in general to provide a sufficiency of protection. However the judge then went on to find that there wasn't such protection available to the appellant. Ms Willocks-Briscoe argued that the judge's decision was not supported by background evidence. Whilst there was evidence of some corruption by some individuals, there was no evidence that the appellant would have been refused the general protection which the judge had found to be available. Ms Willocks-Briscoe also referred to the sufficiency of protection available as set out in AM and BM Albania CG (Trafficked women) [2010] UKUT 00080 (IAC) and relied on in the respondent's refusal letter.
8. In relation to ground 2 Ms Willocks-Briscoe referred me to the House of Lords in Horvath which confirmed that:

'The sufficiency of state protection is not measured by the existence of a real risk of an abuse of rights but by the availability of a system for the protection of the citizen and a reasonable willingness by the state to operate it.'

Given the judge's first finding it was argued that the second finding cannot stand and there was an absence of evidence as to how the judge came to that finding. There was no evidence of the appellant having sought the protection of the authorities and the findings were based on one group of individuals and the evidence did not support that the same would be the case for the whole of Albania.

9. Ms Wass submitted that the findings were not inconsistent. It was her view that it was open to the judge to look at the case law that 'in general' a sufficiency of protection was available but then to go on and relying on his findings of fact, to find that the particular circumstances of this appellant meant that such protection was not available to him. The case of AM and BM made it clear (paragraph [182]) that it was fact specific and that in each case there needed to be an assessment of each individual based on factual findings, as to whether there was a sufficiency of protection for that individual. It was submitted that this was what the judge had done at paragraphs 18 and 19 of his decision. Paragraph 18 of the decision made it clear that this finding would not apply, for example to all members of law enforcement and their families, but that the judge's findings were fact-specific. In relation to Horvath Ms Wass contended that the judge had considered the unwillingness of the authorities to provide protection to this appellant.

#### Ground 1

10. The judge found that the appellant belonged to a Particular Social Group of a child former victim of trafficking. Those findings were not challenged. Both the respondent in the refusal letter and the judge relied on the country guidance case of AM and BM. Although this related to trafficked women, many of the findings are applicable to the appellant's case. It was concluded paragraph [182] that:

'there is considerable corruption in Albania but we conclude that the steps taken by the Albanian authorities are sufficient to meet the standard of sufficiency of protection from re-trafficking from 'new' traffickers as set out in the judgment of Lord Clyde in Horvath from which we have quoted above. However, when considering the issue of whether or not the victim of trafficking has a sufficiency of protection from her former traffickers, should they wish to re-traffic her or harm her we consider that that issue must again be fact specific.'
11. I am not satisfied therefore that the judge's findings were inconsistent or contradictory. Having found that there was, in general, a sufficiency of protection in Albania, the judge then went on, as the guidance in AM and BM required to consider whether the appellant had a sufficiency of protection from his former gang

members/traffickers. In finding that there was no sufficiency of protection for this appellant, there was therefore no inconsistency in the judge's findings, as he was required to go on and make those individual findings. AM and BM is authority for the view that a general sufficiency of protection in Albania does not in itself mean that this will be available for each appellant.

12. I am satisfied therefore that the judge reached a conclusion open to the judge on the evidence and gave detailed, adequate reasons for the findings. I do not find any merit in this ground.

## Ground 2

13. In relation to ground 2 I am satisfied that the judge correctly applied the Horvath test. It is not the case that as has been suggested the judge confused the test with a demand that the Albanian state ensure that no member of the particular social group face any risk. As I have found in ground 1, it was incumbent on the judge to make individual findings in relation to this appellant and whether there was a sufficiency of protection from his former traffickers. The judge carefully considered that issue and found it 'difficult to conceive that he could look to the local police for protection'. The judge went on in paragraph [18] to give reasons for finding that there would not be 'even a measure' of protection available to him, including specifically because many of those in the police who had worked for the appellant's father 'were in the pay of the gang'. The fact that the appellant did not request protection does not in itself negate those findings and the judge gave detailed reasons for making 'exclusively favourable findings' in relation to the facts of the case. These included that the appellant at that time decided to continue to work for the gang (paragraph [7] of the appellant's witness statement) prior to being forced to leave Albania to traffic drugs. He would not therefore have been in a position to seek protection.
14. In relation to Ms Willocks-Briscoe's submission that the evidence did not support that there would not be a sufficiency of protection in all of Albania, the judge found that there would not be a sufficiency of protection in the appellant's home area, and then went on to find in paragraph 20 that internal relocation was not an option open to the appellant. Those findings were not challenged.
15. The findings that the judge made were therefore properly reasoned and dealt with the issue of sufficiency of protection rather than risk. The judge made findings that were open to him on the evidence. The second ground of appeal therefore has no merit in my findings.

## Decision:

16. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law and shall stand.

**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:

Dated: 28 October 2015

Deputy Upper Tribunal Judge Hutchinson