



st

Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/04509/2015

### **THE IMMIGRATION ACTS**

At Field House  
on 29<sup>th</sup> October 2015

Decision and Reasons Promulgated  
On 4<sup>th</sup> January 2016

#### **Before**

DEPUTY JUDGE OF THE UPPER TRIBUNAL FARRELLY

#### **Between**

MS E M  
(ANONYMITY DIRECTION MADE)

**Appellant**

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

**Respondent**

**Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. The appellant was a minor when the claim was made and she fears reprisals from her family. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.**

#### Representation:

For the Appellant: Mr M Hashim, Counsel, instructed by Davjunnel Solicitors.  
For the Respondent: Mr.C.Avery, Home Office Presenting Officer.

### **DECISION AND REASONS**

## Introduction

1. Although it is the respondent who is appealing for convenience I will continue to refer to the parties as they were in the First-tier Tribunal.
2. The appellant is a national of Albania, born in March 1997. She was encountered in March 2014 and claimed asylum. The basis of her claim was that her father took her out of school and arranged her marriage to his friend. She did not want this and when she said this her father would be threatening and physically abusive towards her. Her maternal uncle agreed to help her leave the country and in March 2014 took her by car to meet an agent. She stayed in a house until later that month when she travelled to the United Kingdom in a lorry. She claimed to fear her father: Kunan law required him to honour his promise to his friend.
3. Her claim was refused by the respondent on 29 January 2015. The respondent did not believe the claim engaged the Refugee convention. The respondent did not raise credibility issues but concluded that there were sufficiency of protection for the appellant in Albania and if necessary she could relocate within the country, for instance, to the capital, Tirana. No family life in the United Kingdom was identified. In respect of private life she retains ties to her home country. No exceptional circumstances were identified.
4. Her appeal was heard by First-tier Judge Graham at Birmingham on 11 June 2015. The appeal was allowed under the immigration rules and on freestanding article 8 grounds. The judge had a report from Ms Andrea Balint in which she states that she is a clinical psychologist in Hungary in the process of registration in the United Kingdom. She concluded that the appellant was suffering from post-traumatic stress disorder and severe depression and was at risk of self-harm. Her condition had deteriorated from when she was first assessed a year earlier.
5. The judge accepted the evidence of Ms Balint. The judge found the appellant could not meet the high threshold required for article 3 to be engaged. The judge accepted that appendix FM did not apply and that the appellant had not been in the United Kingdom long enough to meet the requirements of paragraph 276ADE of the immigration rules. However the judge concluded that there would be very significant obstacles to her reintegration into Albania because of her post-traumatic stress disorder and her mother and her maternal uncle could not help as they were fearful of her father.
6. In addition to allowing the appeal under the immigration rules the judge concluded the circumstances were exceptional and justified a freestanding article 8 consideration. Her appeal was allowed on this basis also. Referring to the proportionality assessment, the judge said the appellant had studied in the United Kingdom; should be able to find employment; would not be a burden upon the taxpayer and had no criminal convictions.

The judge said regard was had to the public interest considerations in section 117.

### The Upper Tribunal

7. In seeking permission to appeal the respondent contended that the judge in considering paragraph 276ADE (vi) failed to have any regard to the mental health care available in Albania. In relation to the freestanding article 8. Assessment it was submitted that the judge failed to have any regard to the agencies that could support her as referred to at paragraph 35 in the context of sufficiency of protection. It was also contended that the medical evidence did not establish a return to Albania would cause a deterioration and it was pointed out there had been no past self harm and he was not in receipt of any counselling or medication. It was suggested that the proportionality assessment was inadequate because of the lack of comment about these factors.
8. At hearing. Mr Avery pointed out that the judge at paragraph 38 acknowledged that the appellant's medical condition could not meet the article 3 threshold and this in turn was relevant to the 276ADE (iv) and freestanding article 8 consideration. The appellant had been in the country just over a year and the judge should have regard to the support available to her in her home country. Mr Avery questioned how article 8 was engaged and submitted there was also no proper section 117 assessment.
9. In response Mr Hashim relied on the rule 24 response. Paragraph 10 of the response stated that the report from Ms Balint was central to the appeal and emphasised the appellant's mental state.
10. Mr Avery was of the view that if I found an error of law then I could go on to determine the appeal without a further hearing. Mr Hashim asked that if an error of law was found that instructing solicitors be given an opportunity to obtain a full medical report.

### Consideration.

11. The appellant said she arrived in the United Kingdom on the 20<sup>th</sup> March 2014. At that stage she was 17 years old. She had lived all her life in Albania with her parents and brothers. By the time of the appeal she was eighteen years of age. Paragraph 276 ADE (v) requires a person between 18 and 25 to have spent a continuous period of at least half their life before leave to remain can be granted on the basis of private life. The rule reflects the respondent's attempt at controlling immigration by rules of universal application compliant with article 8. The appellant does not come close to meeting this. The only basis she can remain under this is (vi), that there are very significant obstacles to her reintegration.
12. She is linguistically and culturally familiar with Albania. She has been resourceful enough to travel to the United Kingdom and to adjust to life

here. She has enrolled in the course of education. Immigration Judge Graham in paragraph 40 says that she is vulnerable because of her age, gender, and lack of support in Albania. Her age and gender have not been obstacles in the United Kingdom. I cannot see why they would be so in Albania. In the United Kingdom. She was treated as a child by the local authority and has a social worker to support her. The judge does not make reference to what social services are available in Albania but acknowledges there are protection agencies. The principal obstacle advanced relates to her mental health.

13. Ms Balint reports that the appellant was referred for cognitive behavioural therapy and attended six relaxation sessions. The report indicates that the uncertainty pending a decision on her case was increasing her anxiety and when her claim for asylum was refused, she returned asking for a further assessment. A third assessment indicated deterioration and Ms Balint contacted her GP seeking a referral to a psychiatrist and consideration of medication. The report is dated 20 September 2015. Ms Balint, using diagnostic tools concludes she was suffering from post-traumatic stress disorder, depression and a very high level of distress with a moderate suicide risk. The medical management however, appears limited. She has been in this country a year and a half and was supervised by social services. However, there is no reference to her being seen by to the community mental health team or a psychiatrist. There is no history of self-harm. There is nothing in Judge Graham's decision to indicate that the availability of health care in Albania was factored into the consideration of the viability of her return.
14. It is my conclusion that the judge materially erred in law in the approach taken to rule 276ADE (iv) and the question of the appellant's reintegration. A balanced assessment would require consideration of the facilities in Albania on her return. This did not take place. The same consideration applies with regard to the article 8 private life considerations.
15. It is my conclusion that the decision allowing the appeal under 276ADE (iv) and on the basis of freestanding article 8 rights is flawed and will have to be remade. In fairness to the appellant, bearing in mind her age and the fact her account has not been challenged, the matter should be remitted for a hearing *de novo* before the First-tier Tribunal. This will give her representatives an opportunity to seek full medical evidence and to provide objective evidence as to the facilities which would be available in Albania.

### Decision

16. The decision allowing the appeal is set aside. The matter is remitted to the First-tier Tribunal for a hearing *de novo*.

Deputy Upper Tribunal Judge Farrelly

**Between**

MS E M  
(ANONYMITY DIRECTION MADE)

**Appellant**

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

**Respondent**

Directions.

1. Re list for a *de novo* hearing in the first-tier Tribunal excluding First tier Judge Graham.
2. In preparing for the new hearing the appellant's representatives should provide such medical evidence as they feel necessary to demonstrate why she should be allowed to remain in the United Kingdom.
3. The appellant's representatives and the respondent should provide country information about healthcare and social service support in Albania for someone in the appellant's situation.

Deputy Upper Tribunal Judge Farrelly