



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

Appeal Number: AA/04664/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 2 February 2016**

**Decision & Reasons Promulgated  
On 11 February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON**

**Between**

**AL  
(ANONYMITY ORDER)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms. F. Kadia, A de Ruano, Legal Representatives

For the Respondent: Mr P. Duffy, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the appellant against the decision of the First-tier Tribunal dismissing the appeal of AL a minor and a citizen of Albania against the respondent's decision to refuse his application for asylum and humanitarian protection.
2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order.

Background

3. The appellant was born on 19 August 2000. He applied for asylum in the United Kingdom on 21 August 2014. The respondent refused that claim by way of a decision dated 2 March 2015. The appellant was granted leave to remain until 2 September 2017 as the respondent could not be satisfied that there were safe and adequate reception arrangements for him in Albania as a minor.
4. The appeal against the decision to refuse asylum and humanitarian protection came before First-tier Tribunal Judge C. H. Bennett on 19 August 2015. In a decision promulgated on 16 October 2015, the appeal was dismissed.
5. Permission to appeal to the Upper Tribunal was sought on grounds which can be summarised as follows: that the Judge erred in failing to consider humanitarian protection as an available ground in this an 'upgrade appeal'; and that the Judge misinterpreted the Refugee Convention reason of Particular Social Group.
6. The appeal came before me.

#### Ground 1

7. The Judge made detailed findings including in relation to the background country information. Those findings of fact have not been challenged and were not at issue. Contrary to the Rule 24 Notice, the appellant's grounds of appeal before the First-tier Tribunal did contend that the Judge had failed to engage with the issue of Humanitarian Protection. Mr Duffy accepted that this was the case.
8. Mr Duffy conceded at the beginning of the appeal that given the Judge's findings: that the respondent had accepted that the appellant had been maltreated and neglected by his parents; that there was an insufficiency of protection available in Albania for children against exploitation and against the actions of abusive or neglectful parents (at [17]); that the test in Horvath [2000] UKHL 37; [2001] 2 AC 489 was not satisfied ([17]); and that the respondent (having accepted that reception arrangement for the appellant were inadequate and unsafe) had failed to demonstrate that there was adequacy of protection available for children generally or specifically in the appellant's case (also at [17]); the appellant was therefore entitled to Humanitarian Protection.
9. The respondent had considered in accordance with paragraph 339C of the Immigration Rules whether the appellant was entitled to a grant of Humanitarian Protection. I considered the jurisprudence, including ST (Child asylum seekers) Sri Lanka [2013] UKUT 292 which confirms the availability of humanitarian protection as a ground of appeal where limited leave to remain has been granted in accordance with the respondent's policy on discretionary leave relating to minors.
10. Mr Duffy was of the view therefore that the appellant's appeal, in relation to Humanitarian Protection was bound to succeed (in the event that the appeal did not succeed on asylum grounds). I indicated at the hearing that I was satisfied that this was the case.

## Ground 2

11. It was Ms Kadia's submission that the Judge had misinterpreted Particular Social Group and that again on the basis of the Judge's findings of facts the appellant belongs to a particular social group in Albania and is therefore a refugee. Ms Kadia submitted that a child's age is an immutable characteristic and relied on DS (Afghanistan) [2011] EWCA Civ 305 and LQ (Age: immutable characteristic) Afghanistan [2008] UKAIT 00005.
12. Mr Duffy argued that the categories in the cited cases were narrower applying effectively to Afghani street children/orphans.
13. The Judge made unchallenged findings that there would be no adequate arrangements for the appellant on return (and the Judge had considered the evidence including of other potential family members). The Judge found that there were no adequate reception facilities in Albania and no adequate protection to support at-risk children and families in Albania.
14. The Judge at [13] found that the abuse of the appellant was not for the convention reason of particular social group as the Judge was not satisfied that their parents abused their other children. However, although the Judge made findings that the appellant as an abused/neglected Albanian child would not be able to seek adequate protection in Albania and I accept that age is an immutable characteristic (LQ (above) applied), I am not satisfied that the appellant has demonstrated that the characteristic of being an abused/neglected Albanian child is immutable as such circumstances can change. As such it has not been shown that an abused/neglected minor child in Albania could be a member of a particular social group. Any error by the Judge, in relation to his consideration of the appellant's parents' lack of abuse of their other children, is not therefore material.

## Decision:

15. The appeal is allowed. The making of the decision of the First-tier Tribunal involved an error of law and is set aside to the extent set out above. I preserve the Judge's findings of fact and in relation to the Refugee Convention. I remake the decision allowing the appellant's appeal under the Qualification Directive. The appellant is entitled to Humanitarian Protection.

**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: 8 January 2016

Deputy Upper Tribunal Judge Hutchinson