The Upper Tribunal
(Immigration and Asylum Chamber) **Appeal number: AA/07784/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On February 19, 2016	**On February 26, 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MR E D
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant	Mr Hodson (in-house advocate instructed by Elder Rahimi Solicitors)
Respondent	Mr Staunton (Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant is a national of Albania and he came to the United Kingdom as an unaccompanied minor in November 2013 when he was sixteen years of age He applied for asylum on the basis he had suffered domestic violence at the hands of his parents. The respondent refused his application on September 26, 2014 but granted him discretionary leave to remain on the basis he satisfied the requirements of Paragraph 252ZC of the Immigration Rules in accordance with the published asylum instruction on unaccompanied asylum seeking children because the respondent was

not satisfied that adequate reception arrangements were available for him in his own country.

2. The appellant appealed against that decision under section 82(1) of the Nationality, Immigration and Asylum Act 2002 on October 6, 2014.

3. The matter was heard by Judge of the First-tier Tribunal Dean on July 14, 2015 and in a decision promulgated on August 3, 2015 the Tribunal refused his application for asylum and ancillary applications.

4. The appellant applied for permission to appeal on August 17, 2015 submitting the Tribunal had erred in its approach to the evidence.

5. Permission to appeal was granted by Judge of the First-tier Tribunal Reid on September 22, 2015 on the basis the grounds were arguable the Tribunal had erred in its approach to the assessment of the level of domestic violence and thereafter did not adequately analyse sufficiency of protection or internal relocation. The matter came before me on October 27, 2015 and on that date I concluded there was no error in law in relation to either the appellant's asylum or humanitarian protection claim but there was an error in the way the Judge of the First-tier Tribunal Reid had dealt with the human rights claim.

6. I adjourned the case to today's date giving directions on the format of the resumed hearing. I gave both parties permission to file additional evidence in relation to:

   a. Sufficiency of protection.

   b. Internal relocation.

   c. Medical evidence.

7. Taking into account his age and his ongoing medical condition I indicated the Tribunal would have to consider whether there was sufficiency of protection for him in his home area or whether it was reasonable for him to relocate.

8. I made it clear that submissions only would be required.

9. The First-tier Tribunal made an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I extend that order.

SUBMISSIONS

10. Mr Staunton relied on the refusal letter and in submissions referred me to the appellant's hospital discharge form, a report on Albanian health care and the country information for Albania. In so far as the appellant's own mental health was concerned he submitted the latest report painted an optimistic picture for the appellant. If he still required assistance, he submitted that page 119 and 121 of the National Heath Report confirmed there were facilities in Albania to which he could turn to. As to whether there was sufficiency of protection he submitted the appellant did not seek any protection from the authorities whilst he was in Albania but in any

event he was now an adult and could seek protection from them in his own area. The country information report provided positive information about the state of the country and even if he was unable to return to his village it would not be unreasonable or unduly harsh for him to return to relocate to a capital city where he could utilise the education he has received here. There was no evidence his father would be able to find him and he submitted returning him would not breach his human rights.

11. Mr Hodson adopted the skeleton argument in so far as it remained relevant. The respondent conceded that the appellant had suffered physical abuse and the remaining issues to be decided were whether if was safe for him to return to his home area (sufficiency of protection) or would it be unduly harsh for him to relocate to another area. He submitted the refusal letter accepted the history of abuse and it would not be feasible or safe for him to return to his own village to live either on his own or with other family members. His aunt had explained why she could not provide accommodation and the same applied to other family members. The expert evidence and reports made it clear that the police were unable to provide the appellant with the protection needed as children did not seek protection from the police. Although he was no longer a minor nevertheless he was a young adult. Here he was assisted by social services and would continue to be so until he was 21 years old. The expert report of Professor Haxhiymeri identified the risks he would face as a young adult and the fact he would not have access to the shelters or family accommodation referred to by the respondent in her refusal letter.

12. Mr Hodson further submitted that the appellant's mental condition placed him at further risk because he would be returned as a n vulnerable young adult with no family to turn to. The medical report and discharge form both confirm the precarious nature of his mental state and the fact he had a breakdown when he was refused by the First-tier Tribunal highlighted the difficulties he faced. Whilst there were hospitals and doctors there was limited access. The respondent's own report suggests there were 2 psychiatrists for 100,000 people. This did not inspire confidence in the system and the same report confirmed there were limited funds available for healthcare. Internal relocation was not an option in this case. He referred to the appellant's own bundle and the respondent's own country report. The appellant would also face practical difficulties in returning and being returned alone would place at him risk. Mr Hodson invited me to allow the appeal on humanitarian protection and article 3 grounds. He did not pursue an article 8 appeal on the appellant's behalf.

13. I reserved my decision.

DISCUSSION AND FINDINGS

14. The appellant arrived in the United Kingdom on November 25, 2013 as an unaccompanied minor by clandestine means and made himself known to the police on arrival. He claimed asylum on January 15, 2014. That application was rejected but he was granted limited leave to remain as an unaccompanied minor pursuant under

paragraphs 352ZC to 352ZF of HC 395. On October 27, 2015 I upheld the First-tier decision to dismiss his appeal on asylum and humanitarian protection grounds but I found an error in law in the approach to human rights.

15. I am concerned now with whether his removal would place him at risk of serious harm thereby breaching his rights under article 3 ECHR. This is the only human rights argument I need to consider because Mr Hodson indicated that he did not pursue an appeal under either the Immigration Rules or article 8 ECHR.

16. In addition to the papers that had previously been served I have now been provided with the Hospital discharge form dated October 29, 2015, a 2014 Albanian Health report from Institute of Public Health and the August 2015 Country, Information and Guidance.

17. I accept the appellant was physically abused by his father and I have concluded that such abuse amounted to domestic abuse in light of the fact it occurred within a domestic environment.

18. Mr Hodson confirmed that no additional medical evidence would be adduced and in the absence of any further witness statement from the appellant himself the most current assessment of his medical condition was the discharge form referred to above.

19. Having been assessed and medicated by the hospital for 35 days he was discharged. The discharge form recorded the following:

> "E's mood had been described as euthymic. His sleep, appetite and self-care continue to remain good. He was not suicidal and no threats to others reported. No psychotic symptoms observed. His motivation was good, he had been attending groups and he continued to comply with medication with no side effects reported. He had good insight and no significant incidents since his last review…. His speech was normal in all modalities. He described his mood as general good and objectively he appeared euthymic in mood with a reactive affect. E described good sleep, appetite and self-care. He did not feel hopeless, helpless or worthless, no guilt feelings and did not express any suicidal thoughts or thoughts to self harm or cause harm to others. No evidence of any active psychotic or affective symptoms, continued to comply with medication though complained of eyes rolling up which is though to be a sign extra pyramidal side effects. He had good insight as he was aware he had been unwell and required treatment. E was able to revisit the issue that happened prior to his admission which he regretted and willing to apologise to the lady he harassed".

20. Mr Hodson referred me in closing submissions to the earlier report provided by Dr Laura Salvo dated April 10, 2015 although her report must be considered against the October 29, 2015 assessment.

21. Dr Salvo's report was prepared when E was 17 ½ years of age and was supplemented by a short letter dated May 13, 2015. E complained of weekly headaches which first began after he arrived in the United Kingdom, nightmares, difficulties with concentration and stress. The headaches had reduced in frequency after he had been prescribed glasses in January 2015 and were now weekly as against daily. The nightmares appeared linked to his pending immigration hearing and the general conclusion was that his current difficulties may be symptoms of trauma.

22. Mr Hodson also referred me to the report prepared by Professor Haxhiymeri dated June 25, 2015. This report has to be read alongside the respondent's concession that the appellant had suffered abuse at home. Mr Hodson invited me to find that he would face further abuse if he were now returned.

23. Professor Haxhiymeri's report is a study of abuse faced by children but I am conscious of the fact the appellant is now an adult albeit a young adult. The report concentrates on the abuse that children under the age of fourteen suffer but Mr Hodson referred me to an extract that confirmed children over the age of fourteen continued to be abused by their fathers, sometimes with fatal results, especially if the child lives in a rural area. Professor Haxhiymeri's report suggests that children are reluctant to report matters to the police and those who did seek help could be left without family support. The report considers what facilities are available for accommodating and looking after children/young persons who have been victims of violence although the report bases its conclusions on data that is almost nine years old. Professor Haxhiymeri specifically considers the problems facing the appellant in his home area and concludes he would be tracked down quite easily in that area. At page 19 of his report Professor Haxhiymeri gives reasons as to why internal relocation would not be in his interests and lists these as:

    a. No housing program to support him.

    b. Rent is high.

    c. People have to work two jobs to cover their costs.

    d. Unemployment is high.

    e. No support system due to family problems.

    f. Risk of trafficking.

24. Mr Hodson's argument is that internal relocation would be unduly harsh especially when regard is had for his general health.

25. I was referred to the 2015 Country report. Paragraph 5.1.2 referred to the fact that economic growth slowed further and the level of public debt continued to increase although arguably Albania was performing no worse than many other European Countries. The World Bank stated-

> "Albania is a middle-income country that has made enormous strides in establishing a credible, multi-party democracy and market economy over the

last two decades… Albania has been able to maintain positive growth rates and financial stability despite the ongoing crisis".

26. At paragraph 8.2.2 of the same report it was reported that police corruption remained a problem albeit the ombudsmen processed complaints against the police mainly linked to arrest and detention and at paragraph 8.2.13 it was reported the police often did not have the training or capacity to deal effectively with domestic violence cases. The report also referred to corruption generally and concluded it remained a major obstacle to democratisation and EU integration.

27. The 2014 Health report was referred to by both representatives on basis the appellant was seeking medical treatment in the United Kingdom. The latest report portrays a positive outlook for him and the 2014 Health report has to be considered against that background rather than a background of a person who is having regular medical treatment. The ratio of general practitioners and psychiatrists to the general population is low as is the availability of primary health care. However, it is important to recognise that I am not comparing what is available in the United Kingdom with what is available in Albania. Whilst Albania may lack the numbers and facilities seen in the United Kingdom it cannot be argued that health care, albeit underfinanced, does not exist in Albania.

28. The appellant did not attend and give oral evidence but I am satisfied that does not hamper my assessment of his claim.

29. At the "error of law hearing" I found removing the appellant would not lead to him having a humanitarian protection claim.

30. Paragraph 339C of the Immigration Rules requires the appellant to demonstrate that there are substantial grounds have been shown for believing that the person concerned, if returned to the country of return, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself of the protection of that country. Serious harm consists of:

    (i) The death penalty or execution;

    (ii) Unlawful killing;

    (iii) Torture or inhuman or degrading treatment or punishment of a person in the country of return; or

    (iv) Serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict."

31. The factors advanced and the evidence relied on by Mr Hodson do not bring the appellant's claim within the "humanitarian protection" realm. There is nothing in either Mr Hodson's skeleton argument or his detailed submissions that persuades me to re-visit this issue and I affirm my earlier decision to find no error of law in respect of the appellant's humanitarian protection claim.

32. The appellant's outstanding claim would therefore be under article 3 ECHR. Mr Hodson has raised financial, medical and other circumstances as reasons for engaging article 3.

33. In Bosnja (2002) UKIAT 07605 the Tribunal said that the conditions which an appellant faced on return to his home country, such as a lack or inadequacy of medical facilities, could constitute inhuman or degrading treatment. However, in practice, it will be very rare for an appellant to be able to show that the conditions he faces on arrival home will breach Article 3, at least so far as they relate to the general country conditions.

34. In MB, YT, GA and TK v SSHD [2013] EWHC 123 the Court of Appeal held that case law establish that Article 3 imposes no general obligation on a contracting state to refrain from removing a person to another state or territory in which he would be destitute. It was not the function of Article 3 to impose a minimum standard of social support for those in need. A breach of Article 3 only occurred when deliberate state action was taken to prohibit a person from sustaining himself by work and when accommodation and the barest of necessities were removed.

35. The appellant fears a return to his home area and Mr Hodson argues that there would not be "sufficiency of protection". In light of the fact the respondent accepted he suffered violence at his father's hands and taking into account the findings in Professor Haxhiymeri's report I find it that if he were forced to return to to Albania he would not have sufficiency of protection in his home area.

36. Internal relocation for the purposes of article 3 was raised by Mr Staunton and argued respectively by both representatives. I have considered particularly the medical and expert evidence as well as the two recent reports submitted by Mr Staunton.

37. The latest medical assessment painted a positive picture about the appellant's mental health. Whilst medical facilities in Albania were considerably more restrictive than in the United Kingdom nevertheless facilities existed.

38. The appellant had been educated and accommodated in the United Kingdom and was fit and in reasonable health. There does not appear to be anything that would prevent him from returning to Albania and seeking work. The fact jobs and accommodation may not be as accessible does not automatically mean his return would breach article 3.

39. I accept life would not be easy for the appellant but I remind myself that I am dealing with his article 3 claim as distinct to his article 8 claim. The requirements are different and whilst the test is to the lower standard of proof the appellant must still demonstrate that the conditions he will face are such that returning him would amount to inhuman or degrading treatment.

40. If the only option was to return the appellant to his own village then in light of the problems he experienced and having regard to his age and recent medical problems,

it may be arguable that the threshold had been crossed. However, both representatives accepted internal relocation was an arguable issue that I had be consider and having considered all of the written evidence as well as the representatives' submissions I find I am not satisfied that returning this appellant would breach his rights under article 3 ECHR.

41. Mr Hodson specifically did not seek to raise article 8 ECHR and I accordingly I make no finding on that article.

DECISION

42. There was an error in law in respect of article 3 ECHR and I previously set aside the First-tier decision.

43. I have remade that decision and dismiss it.

Signed: Dated:

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed: Dated:

Deputy Upper Tribunal Judge Alis