



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/12416/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 9 June 2016

Decision & Reasons Promulgated  
On 28 July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

GX

(ANONYMITY ORDER MADE)

Respondent

**Representation:**

For the Appellant: Mrs R Petersen of the Specialist Appeals Team

For the Respondent: Mr B Hoshi of Counsel instructed by Sutovic & Hartigan, solicitors

**DIRECTION Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Applicant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his 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.

## **ERROR OF LAW DECISION AND REASONS**

### **The Respondent**

1. The Respondent (the Applicant) is an Albanian born in 1999. On 28 February 2015 he left Albania for Macedonia on his own passport and from there travelled across Europe to arrive in the United Kingdom on 30 March 2015. The next day he claimed asylum because he feared return to Albania on account of the harm he had suffered at the hands of his father who abused alcohol and to find nearly £500,000 to pay his creditors.

### **The Home Office Decision**

2. On 7 September 2015 the Appellant (the SSHD) refused the Applicant's application and declined to grant him discretionary leave. The SSHD considered the Applicant had not shown that the reasons for his claim formed a nexus with the Refugee Convention. The SSHD accepted that the Applicant had been the subject of abuse by his father but did not accept the part of his account relating to debts his father owed. The SSHD considered the Applicant had failed to approach the authorities in Albania and there was no reason that if he genuinely had a fear why they would be unable to provide a sufficiency of protection. Further, the Applicant would be able to relocate in Albania. The SSHD stated these conclusions had been reached after taking into account the Applicant's best interests as a child under Section 55 of the Borders, Citizenship and Immigration Act 2009.
3. On 24 September 2015 the Applicant lodged a notice of appeal. The grounds asserted he was a member of a Particular Social Group (PSG) namely, the child victims of abuse or domestic violence and that in Albania there was an insufficiency of protection for such persons. The Applicant was an unaccompanied asylum-seeking minor and the SSHD had failed to make efforts to trace his family beyond ascertaining that the family was registered as living in Albania. Further, the SSHD had failed to consider the several factors relevant to showing there were compassionate circumstances so as to require a consideration of his claim by way of reference to Article 8 of the European Convention.

### **Proceedings in the First-tier Tribunal**

4. By a decision promulgated on 16 March 2016 Judge of the First-tier Tribunal Afako allowed the appeal on asylum and Article 8 grounds on the basis that the SSHD had accepted that the Applicant "was the subject of severe abuse at the hands of his father". He referred to the background evidence and the indifference of the authorities to victims of violence in the home.
5. On 7 April 2016 Judge of the First-tier Tribunal Parkes granted the SSHD permission to appeal finding that it was arguable the Judge had erred by failing to consider why the Applicant was to be considered a member of a PSG and had mis-understood the SSHD's acceptance that the Applicant had "faced problems with your father in Albania": see para. 25 of the SSHD's Reasons for Refusal Letter and had experienced

abuse from his father in Albania: see para. 34. However the SSHD had not accepted that the Appellant had suffered severe abuse. The permission grounds were limited to whether the Applicant had suffered ill-treatment amounting to persecution and the issues of protection and internal relocation.

6. The Applicant lodged a response under Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 stating that the SSHD had not challenged the Applicant's claim to have suffered abuse three or four times a week over a period of eighteen months. The SSHD had not qualified the nature of the abuse referred to in the concession contained in the reasons letter. The issue in this appeal was not whether the abuse suffered was sufficiently serious to amount to persecution, but whether there was a sufficiency of protection and whether the Applicant could be expected to relocate within Albania.

### **The Upper Tribunal Hearing**

7. The Applicant attended the hearing. I explained the purpose of a hearing to ascertain whether the First-tier Tribunal's decision contained a material error of law and the procedure to be adopted. Other than to confirm his address, he took no active part in the proceedings.

### **SSHD'S submissions**

8. Mrs Pettersen for the SSHD accepted that the permission should be considered as limited to a consideration of the Judge's treatment of the SSHD's concession that the Applicant had been the victim of abuse and whether that abuse was capable of amounting to persecution. The issue of relocation was not available because it had not been raised as a ground for appeal by the SSHD. In this light I suggested that the issues related only to asylum and/or humanitarian protection under the Qualifying Directive but the permission did not extend to claims under the European Convention. Mr Hoshi stated he objected but without giving any reasons. Mrs Pettersen submitted the Judge had dealt with the nature and extent of the concession made in relation to the abuse suffered by the Appellant at the hands of his father at paragraphs 24 and 25 of his decision. The issue for consideration in the error of law hearing was whether this treatment was sufficiently severe to amount to persecution so as to engage the Refugee Convention.
9. She continued that the Applicant had been the victim of abuse at the hands of his father but not for any Refugee Convention reason. There was no nexus between the harm he suffered and a Convention reason; if there was no nexus between the harm suffered and reason for it being specified in the Refugee Convention, then the Convention was not engaged. The SSHD had difficulty in understanding of what PSG the Applicant considered himself to be a member so as to enable his claim to engage the Refugee Convention. It was accepted that the grounds for appeal had not complained of the Judge's treatment of the issues of sufficiency of protection or internal flight.

**Applicant's submissions**

10. Mr Hoshi for the Applicant submitted the appeal grounds raised the following issues:-
  - (i) whether the Applicant's claim engaged a Refugee Convention reason;
  - (ii) whether it was reasonable for the Judge to consider that the SSHD's concession that the Applicant had suffered abuse at the hands of his father justified the description of it as "severe"; and
  - (iii) whether whatever the abuse the Applicant may have suffered amounted to was sufficient to be considered persecution for the purposes of the Refugee Convention.
11. Judge of the First-tier Tribunal Parkes had rejected the first issue as a ground for appeal. The Judge's finding that the Applicant was a member of a PSG had not been challenged. There followed a discussion about the apparent gap between the SSHD's concession that the Appellant had suffered abuse and the Judge's finding that it was severe. Mr Hoshi requested that he be allowed to continue his submissions on this point even if he might later require further time to consider the issue whether the Appellant's claim showed a sufficient nexus with a Refugee Convention reason.
12. He continued that from the outset the Applicant's claim was based on his fear of mental and physical abuse at the hands of his father. He had referred to it when screened and when interviewed as well as in his first statement and the claim had been recorded at paragraphs 3 and 24-25 of the SSHD's reasons letter. The SSHD had accepted this and gone on to refuse the Appellant's claim on the basis the authorities would be able to offer him a sufficiency of protection in Albania and, in the alternative, he would be able without undue hardship to relocate in Albania. In the First-tier Tribunal the SSHD had confirmed the concession that the Applicant had suffered abuse. He had not been cross-examined on the nature and extent of the abuse he had suffered. I noted that this was not inconsistent with the Judge's Record of Proceedings.
13. The SSHD had never submitted that the violence the Applicant had suffered at the hands of his father was not sufficient to cross the threshold of harm amounting to persecution. At paragraphs 24 and 26 of his decision the Judge had accurately set out the evidential and legal position. Further, the SSHD had never suggested that the minimum threshold had not been crossed. The skeleton argument before the Judge at paragraphs 14 and 15 addressed the law on this issue. If the threshold of persecution had been crossed it was to be noted that the SSHD had already accepted internal relocation was not possible and there was not a sufficiency of protection available to the Applicant.

### **Response for the SSHD**

14. Mrs Pettersen referred to paragraph 18 of the Reasons for Refusal Letter which had noted that the Applicant's claim did not have a sufficient nexus with the Refugee Convention. She accepted it made no reference to humanitarian protection under the Qualification Directive. She continued that even if the abuse suffered by the Appellant did cross the threshold so as to amount to persecution he had not shown that it was persecution for a Refugee Convention reason. The decision therefore contained errors of law and should be set aside. Mr Hoshi repeated his earlier request that if the nexus between the Applicant's claim and the Refugee Convention was an issue then he would wish to make written submissions.

### **Consideration and Conclusions**

15. The statement which the Applicant submitted with his self-completed Statement of Evidence Form dated 29 April 2015, some two and a half months before his interview, attributes the abuse the Applicant suffered at the hands of his father to his father developing a drinking habit: see paragraphs 9-15. The Judge noted the submissions made before him for the SSHD accepted that the abuse was consequent upon the Applicant's father's excessive drinking. At paragraph 39 of his decision the Judge rejected the Applicant's claim to have been pursued by masked men whom he claimed represented his father's creditors.
16. The Applicant's evidence is that his father slapped him and beat him and sometimes would punch him in the stomach. This is set out in his statement forming part of his self-completed Statement of Evidence Form and at interview replies 57 and 66-67.
17. The Applicant's evidence at the hearing was that his father used to drink and would beat him, but that he became increasingly violent when he started drinking more on account of his debt problems. The SSHD accepted that matters had deteriorated when the Applicant's father drank excessively, but there was no exploration at the hearing or supporting evidence about the extent of the beatings which the Applicant stated he suffered at the hands of his father. The SSHD set out her position at paragraphs 24 and 25 of the reasons letter.
18. The Judge did not sufficiently address the nature and extent of the abuse claimed by the Applicant because at paragraph 26 of his decision he mis-construed the SSHD's position. It might be said that the SSHD could have framed whatever concession was being made in clearer terms but I find from the thrust and tenor of the SSHD's reasons letter that the term "abuse" was not intended to mean abuse amounting to persecution or similar ill-treatment. Paragraph 29 of the Judge's decision does not engage directly with the specific parts of section 4 of Dr Young's report dealing with domestic violence. Given the rejection of a substantial element of the Applicant's account, a fuller engagement with the background evidence was necessary to support the Judge's conclusions that the Applicant had been subjected to severe abuse sufficient to amount to persecution. This amounted to an error of law sufficiently material to require the decision to be set aside in its entirety. It is

therefore unnecessary for the purposes of this decision to decide the Refugee Convention nexus point although it will doubtless feature in any hearing afresh.

19. The appeal will need to be heard afresh in all respects which will require an extensive fact-finding exercise. Therefore, having regard to Section 12 of the Tribunals, Courts and Enforcement Act 2007 and paragraph 7.2 of the Practice Statement of 10 February 2010 (as amended) I direct that the appeal is remitted to the First-tier Tribunal for hearing afresh before a Judge other than Judge Afako.

### **Anonymity**

20. The matter of anonymity was not addressed at the hearing before me and in the circumstances because this case involves a minor and his claim is based on his home circumstances I make an anonymity order. This will need to be re-visited by the First-tier Tribunal when the appeal is heard afresh.

### **The Remitted Hearing**

21. In addition to making findings on all relevant facts, the hearing afresh will likely need to include a consideration of whether the Applicant's circumstances as found engage and have a nexus with the Refugee Convention or the Qualification Directive. If the claim proceeds to a consideration of Articles 3 and 8 of the European Convention the Judge will need to take into account the best interest of the Applicant as a child and so far as may be relevant the provisions of Part VA of the Nationality, Immigration and Asylum Act 2002 as amended.

### **SUMMARY OF DECISION**

**The decision of the First-tier Tribunal contained a material error of law such that it should be set aside. The appeal is remitted to the First-tier Tribunal for hearing afresh.**

Signed/Official Crest

Date 27. vii. 2016

Designated Judge Shaerf  
A Deputy Judge of the Upper Tribunal