Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07296/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19 June 2017	**On 3 October 2017**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

JS
(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Collins instructed by Sentinel Solicitors
For the Respondent: Mr S Tufan Senior Home Office Presenting Officer

DECISION AND REASONS

1. On the 27 January 2017, the Upper Tribunal heard the appellant's challenge to a determination of the First-tier Tribunal. It was found that the First-tier Tribunal had, on balance, erred in law as asserted by the appellant and that decision set aside.
2. It was directed the appeal be listed for a further hearing before the Upper Tribunal to enable the appeal to be heard afresh with a view to that this Tribunal

substituting a decision to either allow or dismiss the appeal. It was further directed that the applicant's name, date of birth, nationality, immigration status or place of origin in Albania are preserved finding as they are not disputed. Listing directions state the Upper Tribunal shall examine the merits of the claim to be at risk on return as a result of the appellants sexual identity both in terms of any risk posed by the Albanian State and society and also by the applicant's father, if his claimed sexual identity is accepted, and whether his account of his father's reaction on a previous occasion is found to be credible.

Background

3. The appellant is an Albanian national born on [ ] 1997 who left Albania on or around 11 December 2013 arriving in the UK on 18 December 2013. The appellant claimed asylum the following day which was refused by the Secretary of State in a decision dated 14 April 2015. Although it is said the appellant was at the date of decision an unaccompanied minor he was not granted a period of Leave to Remain.
4. The procedural history shows the appellant's appeal against the initial refusal of his claim was heard by a judge at Hatton Cross on 11 December 2015 who dismissed the appeal in a decision promulgated on 22 December 2015. The appellant applied to the Upper Tribunal seeking permission to appeal that decision which was granted and the decision set aside.
5. The case was remitted and heard by a different First-tier Tribunal judge sitting at Hatton Cross on 7 September 2016. The decision promulgated on 27 September 2016 dismissing the appeal is that which the Upper Tribunal found was infected by material error resulting in it being set aside and this hearing being listed.
6. In his skeleton argument dated 19 June 2017 Mr Collins confirms the Convention Reason relied upon by the appellant is that he is a member of a Particular Social Group as a homosexual. The respondent accepts that such a claim engages the Refugee Convention but does not accept the appellant's claim as to his sexual orientation or that a relationship with a named male is credible.
7. At [6] of the skeleton argument Mr Collins poses a number of issues for the Tribunal to rule upon which he states are:

    (i) is the appellant homosexual

    (ii) is the appellant telling the truth about past events as claimed

    (iii) if so does the appellant have a well-founded fear of persecution or serious harm from his and/or the named individuals family

    (iv) if so is there a sufficiency of protection

    (v) if not whether there exists a viable and reasonable internal relocation option.
8. Mr Collins confirmed at the outset of the hearing that it is not the appellant's case that he can maintain his claim of persecution in the capital of Albania Tirana although any risk to the appellant in his home area, the issue of internal

relocation, and whether it will be unduly harsh to expect the appellant to return to Albania pursuant to paragraph 276ADE(vi) are said to be live issues.

The law

9. It is not disputed that if the appellant establishes he is a member of the particular social group relied upon he can found a claim for asylum provided he establishes a credible real risk on return as a result of membership of that social group, in relation to which, there is no sufficiency of protection or internal flight option available with his home state. If so, there is no obligation upon the Secretary of State to recognise the appellant as a refugee or person in need of international protection.
10. The decisions of the Upper Tribunal *IM (Risk – Objective Evidence – Homosexuals) Albania CG [2003] UKIAT 00067* is referred to by Mr Collins in his skeleton argument where it is submitted that the decision in *IM* is "of such a vintage that it is not, with respect, of much present use or assistance". The difficulty with the submission, per se, is that *IM* remains a country guidance case. In *IM* the Tribunal said that homosexuals caught *in flagrante delicto* are not at risk in Albania.
11. A later decision of *MK (Lesbians) Albania [2009] UKAIT 00036* has been removed as a country guidance case in accordance with an order of the Court of Appeal dated 10 October 2011.
12. This Tribunal can depart from a country guidance decision if evidence is adduced making it appropriate to do so. In *SG (Iraq) v SSHD; OR (Iraq) v SSHD [2012] EWCA Civ 940* the Court of Appeal said that the CG procedure was aimed at arriving at a reliable and accurate determination and it was for those reasons, as well as the desirability of consistency, that decision-makers and tribunal judges were required to take country guidance determinations into account, and to follow them unless very strong grounds supported by cogent evidence, were adduced justifying their not doing so (paras 43 – 50). Passage of time, *per se*, does not arguably amount such a ground without more. There are a number of country guidance decisions of similar vintage relating to other countries appearing in the Upper Tribunal country guidance authority list which remain good law.
13. A matter of more importance is that all decisions prior to 2010 must also be read in light of the Supreme Court's comments in *HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31*.
14. In *HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31* Lord Rodgers said "When an applicant applies for asylum on the ground of a well-founded fear of persecution because he is gay, the tribunal must first ask itself whether it is satisfied on the evidence that he is gay, or that he would be treated as gay by potential persecutors in his country of nationality. If so, the tribunal must then ask itself whether it is satisfied on the available evidence that gay people who lived openly would be liable to persecution in the applicant's country of nationality. If so, the tribunal must go on to consider what the individual applicant would do if he were returned to that country. If the

applicant would in fact live openly and thereby be exposed to a real risk of persecution, then he has a well-founded fear of persecution - even if he could avoid the risk by living "discreetly". If, on the other hand, the tribunal concludes that the applicant would in fact live discreetly and so avoid persecution, it must go on to ask itself why he would do so. If the tribunal concludes that the applicant would choose to live discreetly simply because that was how he himself would wish to live, or because of social pressures, e g, not wanting to distress his parents or embarrass his friends, then his application should be rejected. Social pressures of that kind do not amount to persecution and the Convention does not offer protection against them. Such a person has no well-founded fear of persecution because, for reasons that have nothing to do with any fear of persecution, he himself chooses to adopt a way of life which means that he is not in fact liable to be persecuted because he is gay. If, on the other hand, the tribunal concludes that a material reason for the applicant living discreetly on his return would be a fear of the persecution which would follow if he were to live openly as a gay man, then, other things being equal, his application should be accepted. Such a person has a well-founded fear of persecution. To reject his application on the ground that he could avoid the persecution by living discreetly would be to defeat the very right which the Convention exists to protect – his right to live freely and openly as a gay man without fear of persecution. By admitting him to asylum and allowing him to live freely and openly as a gay man without fear of persecution, the receiving state gives effect to that right by affording the applicant a surrogate for the protection from persecution which his country of nationality should have afforded him". Lord Hope said "It is necessary to proceed in stages. (i) The first stage, of course, is to consider whether the applicant is indeed gay. Unless he can establish that he is of that orientation he will not be entitled to be treated as a member of the particular social group. But I would regard this part of the test as having been satisfied if the applicant's case is that he is at risk of persecution because he is suspected of being gay, if his past history shows that this is in fact the case. (ii) The next stage is to examine a group of questions which are directed to what his situation will be on return. This part of the inquiry is directed to what will happen in the future. The Home Office's Country of Origin report will provide the background. There will be little difficulty in holding that in countries such as Iran and Cameroon gays or persons who are believed to be gay are persecuted and that persecution is something that may reasonably be feared. The question is how each applicant, looked at individually, will conduct himself if returned and how others will react to what he does. Those others will include everyone with whom he will come in contact, in private as well as in public. The way he conducts himself may vary from one situation to another, with varying degrees of risk. But he cannot and must not be expected to conceal aspects of his sexual orientation which he is unwilling to conceal, even from those whom he knows may disapprove of it. If he fears persecution as a result and that fear is well-founded, he will be entitled to asylum however unreasonable his refusal to resort to concealment may be. The question what is reasonably tolerable has no part in

this inquiry. (iii) On the other hand, the fact that the applicant will not be able to do in the country of his nationality everything that he can do openly in the country whose protection he seeks is not the test. As I said earlier (see para 15), the Convention was not directed to reforming the level of rights in the country of origin. So it would be wrong to approach the issue on the basis that the purpose of the Convention is to guarantee to an applicant who is gay that he can live as freely and as openly as a gay person as he would be able to do if he were not returned. It does not guarantee to everyone the human rights standards that are applied by the receiving country within its own territory. The focus throughout must be on what will happen in the country of origin. (iv) The next stage, if it is found that the applicant will in fact conceal aspects of his sexual orientation if returned, is to consider why he will do so. If this will simply be in response to social pressures or for cultural or religious reasons of his own choosing and not because of a fear of persecution, his claim for asylum must be rejected. But if the reason why he will resort to concealment is that he genuinely fears that otherwise he will be persecuted, it will be necessary to consider whether that fear is well founded. (v) This is the final and conclusive question: does he have a well-founded fear that he will be persecuted? If he has, the causative condition that Lord Bingham referred to in Januzi v Secretary of State for the Home Department [2006] 2 AC 426, para 5 will have been established. The applicant will be entitled to asylum.

15. In *HL (Malaysia) v Secretary of State for the Home Department [2012] EWCA Civ 834* it was held that there was no inconsistency between the guidance given by Lord Hope and by Lord Rodger in *HJ (Iran)*. Lord Rodger's conclusion that the Refugee Convention protected an asylum seekers right to live freely and openly as a gay man without fear of persecution was entirely consistent with Lord Hope's statement that the Refugee Convention did not guarantee universal human rights.

16. In *LC (Albania) v Secretary of State for the Home Department & Anor [2017] EWCA Civ 351* it was held that the guidance set out in *HJ* on the approach to sexual orientation asylum claims, including consideration of whether a gay asylum seeker would conceal their sexual orientation upon return to their country of origin and the reasons for concealment, was compatible with Directive 2004/83. The argument, which was not accepted, had been that if a person was gay or would be treated as gay by potential persecutors and if someone who was openly gay would have a well-founded fear of persecution then the person should succeed, i.e. it was wrong to proceed to consider steps (iii) and (iv) of the *HJ* test as adumbrated by Lord Rodger.

Discussion

The evidence

17. The appellant has provided three witness statements dated 24 January 2014, 5 November 2015 and 19 August 2016 the contents of which he stated are true.

18. In his initial statement, the appellant stated he originates from Kukus. He has two siblings and an elder brother then aged 19 and a sister. He attended primary school in Kukes from 2004 to June 2013 and a local secondary school from September 2013.
19. The appellant states that from the age of 13/14 he started "feeling strange". He would play with his mother's make-up and lipstick and on occasion even try on his mother's clothes and shoes describing a fascination in such matters and feeling extremely happy when he wore his mother's clothes, make-up and shoes. The appellant stated his mother thought that was funny and would laugh at him but his father was not amused and would get extremely cross with him, would slap him on occasions, and become extremely angry with him.
20. The appellant stated he used to help his father in his cafe bar. He also started fantasising about boys and obtained a 'strange fascination' when he wore his mother's clothes and make-up. He stated that whenever his parents were not around and at least a few times a fortnight, in any event, he would undertake such activities which he would do so after locking the door.
21. The appellant claims he was sexually attracted by boys although liked spending time with girls but was never attracted to them sexually. The appellant states that whilst at secondary school he spent more time with a boy named Julian who he describes as being different from other boys and to whom he became attracted. The appellant claimed in November 2012 they started a physical relationship.
22. The appellant claimed that after he started the relationship with Julian he would often go to his house as they had more privacy as his parents were working. The appellant states that they would look at gay websites and gay porn on the Internet and that on 5 December 2013, while surfing the Internet, they started fondling and caressing each other's private parts. The appellant states that suddenly, after they had taken off their clothes and were fondling each other, the boy's father came in and caught them. The appellant stated they were both naked at the time and therefore the other boy's father immediately understood what they were doing.
23. Julian's father is said to have started to shout and scream at them and started beating them with fists and hands. The appellant claims he was able to run away as Julian's father had grabbed his son providing the opportunity. The appellant states that he immediately understood that since homosexuality is unacceptable in Albania he will be required to run away from Albania in order to save himself.
24. The appellant states he went to his father's café bar to take some money but when he went there he found his father by the front of the restaurant. The appellant therefore went to the back door and open the drawer of the counter where money was normally kept and took about 3000 New Lek from the drawer. The appellant states his father suddenly called his name, grabbed the appellant around his neck, and started to beat him. The appellant stated he attempted to strangle him and that his father was totally hysteric and swearing at him and being abusive and accusing him of humiliating him and bring a bad name to him and to the family by his activities.

25. The appellant states his father told him that Julian's father had telephoned him and advised him what he had seen. The appellant states his father then grabbed a knife and attacked him which tore his jacket although the people in the coffee shop held his father back, otherwise the appellant asserts he would have killed him.
26. The appellant stated he ran from the shop and went to the house of another friend in a village where he stayed for five days. The appellant claims the news of what happened spread and the family of his friend came to know about it and made him leave their house. The appellant states he walked to Kukes where he went to the Registry Office and applied for a birth certificate which was granted, after which, on 11 December 2013 (the same day) he crossed the border into Kosovo.
27. The appellant claims the driver of the minivan in which he was travelling told him about a place where lorries are parked. The appellant remained in Kosovo for two days and on 13 December 2013 left Kosovo by lorry. The appellant claimed he would sneak into a lorry which travelled for three days before reaching the Belgian border. The lorry stopped on the way but the appellant did not get out. After reaching Belgium the appellant left the lorry and got into another lorry which brought him to the United Kingdom following which he claimed asylum.
28. In his second witness statement, the appellant comments upon the reasons for refusal letter and claims to have had two homosexual relationships in the UK first with a man from Romania lasting two months and the second with a British man lasting two weeks which the appellant claimed were sexual. The appellant stated he attended gay bars and clubs when he could afford to do so but avoided making friends with Albanians as classmates at the school he attends pick on him for not having a girlfriend. The appellant claims he cannot be open about his sexuality with Albanians in the UK because he fears he will be attacked.
29. In the third statement of 19 August 2016 the appellant confirms that since making his second witness statement he has had one further same-sex relationship with an Italian man he met in a bar in Leicester Square in London. The relationship was sexual and lasted for three months. The appellant states there has been no change in circumstances in Albania.
30. In reply to questions put in examination in chief, the appellant was asked about his mother's reaction to his activities within their home which he claimed she seemed to think were funny. The appellant was asked why he didn't tell his mother about his feelings which the appellant confirmed was because he did not think it is acceptable.
31. When asked about relationships other than those disclosed in the witness statements the appellant stated he had had two others, one in November 2016 which ended and the second one which lasted a week with a Greek national around Christmas time. Since Christmas 2016 the appellant confirmed he had not been in a relationship.
32. The appellant handed a letter in on the day of the hearing headed 'Peepal Tree - Developing Futures', dated 16 June 2017 which is written by a Support Service

Manager. The letter states that the organisation currently supports and accommodate the appellant who was referred to their offices by the London Borough of Richmond by whom he was initially supported as a 'Looked After Child' under the Children's Act 1989. The fourth paragraph of that letter states:

> "J is a very sensible and hard-working young person, and throughout J's stay with our organisation he has been very well behaved. His engagement with staff has been very good and he enjoys a good relationship with support staff. He has always remained polite and respectful at his placement and we have never had any concerns around him breaching the placement rules. Unfortunately, J has experienced difficulties around his emotional well-being, and there are times when he will become quite low. His worries have been related to his previous experiences in Albania. We are aware that J had troubles due to his sexual orientation, and this continues to play on his mind. We have identified local support groups and have discussed this with J. Although he would dearly like to attend, he has been unable to do so as he fears that other Albanian young people may become aware that he is gay and this will upset the stability he has found. We have continued to offer him support and guidance as we have found that there are times when he come become quite withdrawn and isolated"

33. The letter refers to the excellent progress the appellant is making on a motor mechanics course as a result of which he was asked whether it meant he will be able to live in Tirana. The appellant asserts that in Tirana there is discrimination against people of different sexual orientations and that he could not move there and that they would disregard his education. The appellant claimed that the community did not accept people with different sexual orientations. Although the appellant has been educated in Albania he stated he had never known anyone to support gay rights or anyone coming to school to say they support such.
34. It was put to the appellant that there was material which shows there are support groups, but not in the appellant's home area, and he was asked why he could not move and seek support in Tirana. The appellant's response was that Tirana is not a big city and he would have to register there and that his family will find out. The appellant maintained he would have no support and kept repeating that even if there were groups and organisations, they did not come to school to offer help and he had not heard of any groups as such.
35. The appellant was asked why there was nobody in attendance to support him before the tribunal in cross examination by Mr Tufan. The appellant responded by stating that when he went to school last year many of his friends knew he was gay but that he discontinued the course as he was not allowed to continue to study. When it was pointed out to the appellant that there had been two or three previous hearings before the tribunal and that it did not appear that anyone was prepared to give evidence to support him on any other occasion, the appellant maintained that if he was in education he would tell his friends and ask them to give evidence but that as he is not in education he did not have any friends.
36. The appellant's evidence had been previously that he was not interested in sport and that he preferred the company of girls and dressing up in his mother's

clothing which was stated by the Presenting Officer to be contradicted by a letter from the Royal Borough of Kingston and Richmond dated 20 January 2017 which describe the appellant as keeping active and having expressed an interest in football. The appellant's response was to state he was not interested in playing football but said he was so he would be active and could go out with friends.

37. The appellant claims not to have contacted anybody in Albania since he left the country which he stated was because he was settled in the UK. The appellant has not attempted to contact the boy with whom he claims to have been discovered in a compromising position in Albania.

38. The appellant was asked by Mr Tufan why he was not able to give the surname of Julian. The appellant claimed he could not give it as he had not asked this individual his name and that they would just talk of his personal problems. The appellant was asked whether he knew the individuals father which he claimed he did, but when asked for the surname stated he did not know it. When asked whether the boy's father knew the appellant's father the appellant stated that they had contact as the man was a builder and did work on their premises.

39. The appellant was asked whether when he was caught by Julian's father they had locked the door. The appellant claimed the main door to the house was locked but not the door of the room which they were in as they thought Julian's father was at work.

40. The appellant confirmed when he was caught he had no clothes on and when asked how he was able to escape without any clothes he claimed that he grabbed his things as the man was dealing with Julian first. When asked whether he ran out of the house without any clothes the appellant claimed he put them on first.

41. The appellant was asked about the time it took him to get his father's cafe and his claim that having arrived at the cafe he took 300,000 Lak. The appellant said he had lied, claiming that he had stolen the money before, not for this person as he had taken the money to go out. The appellant alleged his father told him he did not need the money and that he should take it.

42. The appellant claimed his father did not see him take the money from the cafe as there were other workers there and his father was not near the cash register.

43. When asked about whether he worked in his father's cafe and the cost of a glass of coffee in the cafe the appellant claimed was 50 new lac. It was put to the appellant that with a cup of coffee costing 50Lac, the 3,000 new Lac he had taken would represent a lot of money being held on the premises, the appellant claimed that a cup of coffee cost the equivalent of 30p and 3,000 new Lac equated to approximately £20.

44. The appellant confirmed he has a cousin and relatives in Tirana who he had met previously but did not meet them in the house in Tirana. When asked whether the cousins wanted to kill him the appellant stated all members of the extended family held the same views.

45. The appellant answered a number of questions in a detailed re-examination before submissions were received from the advocates.

The country reports

46. The appellant sought to rely upon an expert report written by Ms Vickers who describes herself as an expert in Albanian affairs.

47. In relation to any risk faced by the appellant, and from whom, Ms Vickers refers to the significance of the appellant's family originating in the North-Eastern District of Kukes near the border with Kosovo which is described as one of the most socially and economically deprived areas of Albania as well as the most culturally conservative. It is stated the predominantly Muslim population still staunchly adhere to strict moral codes which strongly condemn all forms of homosexuality. Given the social and cultural background of the claimant's family it was stated it would not be unusual for his father to disown his son and threatened to kill him if he became aware of the appellant having a sexual relationship with his friend Julian. It is said that although the reaction of the appellant's father may appear extreme, within the context of northern Albanian society and culture it is plausible.

48. Ms Vickers states that such is the stigma attached to homosexuality that the claimant's actions would have severe ramifications for all members of his family. If the community discovered his sexuality it was likely to become impossible for any unmarried members such as his brother and sister to find an acceptable spouse and the whole family would be socially ostracised.

49. It is written that one of the most prominent and important values of Albanian society is the protection of personal honour and dignity that the good reputation of the family depends upon the respect of the community.

50. The expert states that those bringing dishonour may be shunned for work opportunities, not visited by other families, and that the appellant would be hounded from the family home and that certain relatives would feel honour bound to try and kill him to "wash away the shame".

51. The expert notes there is no legal limitation for gay people in Albania although those who are open about their LGBT sexual orientation have faced job loss, discrimination, threats and hate speech. Such persons are vitally invisible in the workplace. The expert states that in the appellant's circumstances he will find it difficult to make a living given that unemployment is high and jobs are found through family and social connections rather than based upon merit. Ms Vickers notes that in 2016 forty-three cases of discrimination in workplaces and/or discrimination in job recruitment and selection were reported to Aleanca LGBT. The expert states she is unaware of anywhere in Albania where gay men can openly socialise and conduct relationships and that all relationships have to be conducted clandestinely to avoid detection by family members or various forms of abuse and discrimination from society at large. It is stated there are no gay clubs or neighbourhoods in Albania and virtually no one is public about being LGBT. The expert states she is aware of groups of gay individuals meeting in Tirana but they do so in a secure and discreet location away from outsiders although there is one bar in Tirana called "Bunker 44" which is known to be "gay friendly" although is stated to be frequented by mostly by tourists and

foreign expats who live in Tirana and is in the area where the wealthiest and best educated Albanians socialise.

52. A representative of the NGO Aleanca LGBT has stated hate crime is not widespread because it is difficult to identify most gay and lesbian people but when they come out the risk of becoming a victim of hate crime is very high. Civil society groups report regular incidents of homophobic violence and examples in 2009, 2011 and 2013 are provided in the report.

53. The expert states that while the Albanian government is under great international pressure and has taken steps to improve state protection those steps do not yet provide sufficient protection for an individual who feel they will be harmed by non-state actors. Discrimination against homosexuals by the police is said to remain strong and there is an inherent belief among the majority of Albanians that the police are not there to help ordinary citizens but merely instruments to assist control by the State.

54. Hate crimes have been admitted to the criminal code but there has been almost no research or data collected on LGBT issues for hate crimes in Albania and much of the mistreatment or violence faced by LGBT people is not officially documented.

55. It is noted that whether there is a willingness to implement anti-gay discrimination laws remains questionable as Albanian laws are often not implemented.

56. The author of the report notes at page 6:

> "Official support services for LGBT people in Albania are very limited with no social support networks such as social workers or councillors and they are of little assistance for people facing difficulty. There are four NGO organisations, all based in Tirana, which work specifically on LGBT issues: Aleanca, LGBT Pro, the Albanian Lesbian Bay Association, and Society for Gay Albania, although the latter two organisations are involved mainly in condom distribution. The country's first and only residential shelter has been set up in Tirana for young LGBT people who are victims of or at risk of domestic violence, physical or psychological. However, this one shelter with only eight beds (for four women and four for men) can only accommodate a virulent limited number of individuals aged between 18 to 25 for a maximum period of six months each. There are no LGBT organisations outside Tirana and the current LGBT organisations have little capacity to do out reach beyond Tirana. Thus the situation for LGBT persons outside the capital is bleak, but also within Tirana there is little protection available for LGBT people."

57. There is reference to the appellant's claim to have suffered violent abuse at the hands of his father in relation to which the expert reports that alongside the rise in the number of domestic abuse reports is the gradual development of activities working to guarantee protection for victims. There have been laws passed which authorise specific government bodies to directly address domestic violence for the first time in Albanian history. In the expert's opinion, however, the effective application of the law remains problematic since passing there have been challenges regarding implementation as well as gaining popular cultural acceptance, especially in northern and central Albania, where the problem of

domestic violence is both underreported yet widespread and deeply ingrained in traditional views on family and honour. The expert reports that despite measures being taken incidents of domestic violence are increasing and facilities to deal with the problem wholly inadequate with only a handful of refuge shelters. In relation to the appellant the expert writes:

> "In theory, should the claimant return to Albania he would be able to access various forms of social/welfare assistance, in practice, however, he is likely to face numerous obstacles in accessing any social services, support or protection available to him. Whilst domestic abuse NGO's are in place, the lack of funding on every front severely limits their efforts. Much of the current programming is funded solely by international NGOs and its sustainability is unpredictable. The Albanian state provides a small amount of social assistance to nearly 20% of its population to a system that allows a degree of community discretion in determining distribution. Nevertheless, a large number of poor are excluded from social assistance. The system is hampered by the absence of a clear objective criterion to determine the size of the grants from the centre to Commons and limited information that might be used to implement this criterion. Albania still has a subsistence-based culture with high unemployment and access to housing and employment would be difficult for a relatively uneducated gay man such as the claimant with no family support."

58. When considering sufficiency of protection, the expert writes:

> "Putting aside the issue of corruption, LGBT people remain reluctant to go to the police with their problems and view the police as a source of harassment rather than protection. As with the general public, apart from a small well-educated group in Tirana, there is low awareness of LGBT rights amongst the LGBT community itself. Therefore there are no guarantees that the claimant will be afforded assistance from the state if he is attacked and, short of him being actually killed, the police are unlikely to take any meaningful action to protect him."

59. In the expert's opinion, it will be unwise for the appellant to return to his home area although also asserting the appellant would encounter problems in Tirana where he also has family relatives. The expert, when discussing settlement relocation within Albania to Tirana refers to communities developing based upon neighbourhoods backing their own original district and that it would be very difficult for a person to remain anonymous and being gay would considerably worsen the appellant's chances of been able to settle anywhere outside Tirana where there is the only, albeit limited, support network for LGBT people. The expert asserts that even if the appellant returned to Tirana there was the risk that you would be identified by other residents from the Kukes region as a result of which he would run a high risk of been located by his father and other family members.

60. The appellant raised in his own evidence the issue of relocation and registration which the expert confirms the appellant will be obliged to do, as every Albanian citizen must, if he relocated. It is stated that the register is open to all and can be accessed by anyone and that as soon as the appellant registered in a shelter, home or college, the requirement to update the Civil Register would mean that

he will be easily traced by anyone wishing to find him making finding a safe and secure shelter at an undisclosed location where confidentiality will be maintained is very difficult.

61. Country Information from the UNHCR has also been provided and considered.

Findings

62. In relation to the first question posed by Mr Collins and in *HJ (Iran),* is the appellant homosexual? The only direct evidence available to the Tribunal is the oral evidence of the appellant. There is no corroborative evidence made available today from individuals with whom the appellant claims to have had a sexual relationship or evidence from classmates or those he has known previously who he states are aware he is gay.

63. I do not accept as plausible the appellant's explanation for not approaching his previous classmates, who he claims would have corroborative information, on the basis that he was no longer in education as he was unable to continue his course as a result of his immigration status. This is the fourth hearing of this appeal, at various levels, the appellant is assisted by legal representation, yet no effort appears to have been made to approach individuals who are likely to have been contactable either through the course which the appellant wanted to attend but could not which they had attended, or via telephone numbers or any other available means of communication, including the appellant visiting such individuals. Applications for orders compelling the attendance of such persons could have been arranged but nothing has been forthcoming.

64. It also appears that notwithstanding evidence of support services being available for the appellant in the United Kingdom no effort has been made by the appellant to engage such services to assist with any specific issues that may arise relating to sexual identity. There is no evidence that seeking such services would have compromised his position with Albanians in the United Kingdom are such services are, by their nature, confidential.

65. The appellant claims he was aware of his sexuality as a young teenager and it is plausible as he describes that he may have experienced not only physical but also emotional changes through puberty which may have led to a developing attraction. The difficulty for any court or tribunal in a case involving sexual orientation or religious belief is that what a judicial body has been asked to do is to look into a person's heart or soul to try and ascertain that what they claim about their feelings and beliefs is true. Proceedings in this jurisdiction are, however, adversarial and the burden falls upon the appellant in this case to establish to the required lower standards that what he says about his sexual self-identity is true.

66. A person does not establish their inner feelings solely by reference to physical sexual conduct. A lot of the appellant's evidence referred to physical acts of putting up make up, dressing up in his mother's clothing and entering into sexual relationships when organisations such as Stonewall make it clear that such activities are not determinative of a person's sexual identity. There are many examples of people both within public life and elsewhere either revealing

their sexual orientation as a gay or lesbian person at a later date or being 'outed' by members of the press when previously they have led what many assess as being 'perfectly normal lives' with no indication to the outside world that they have engaged in the type of behaviour the appellant refers to.

67. The appellant also claims on the one hand to act discreetly as he does not want Albanian nationals in the UK to know of his sexually orientation yet also claims to have attended gay bars in London and have met individuals with whom he has engaged in same-sex activity. The chance of being discovered in places like Leicester Square, a popular area within London, is real and questions whether these are the actions of a person claiming to need to conduct themselves discreetly as a result of a credible real risk of discovery may arise.

68. Mr Tufan's point regarding the appellant claiming not to like sport or to be active yet advising others that he liked football is not a determinative point but perhaps a minor issue that arose from the evidence as there is no published literature to indicate a person who claims to be homosexual cannot at a later date develop a liking for sporting activities such as football, especially as they grow mature and may have changed interests and may have greater access to sports activities on television than they may have had previously.

69. The First-tier judge referred to the claim by the appellant that he went with Julian when the door to their room was not locked. The appellant's evidence was that he did not tell his mother about his feelings as he knew that how he felt was "wrong" and was concerned about the consequences, yet claims not to have taken the simplest of precautions, which was to lock the door of the room in which these activities were taking place. The appellant describes having taken measures to prevent discovery when looking at material previously, elsewhere, but not on the occasion where he claims the events arose that give rise to the alleged real risk on return to Albania.

70. The appellant when questioned about this in his oral evidence claimed that the front door to the property was locked but the bedroom door they were in was not which suggests an awareness of a real risk yet with only minimal precautions being taken. Locking the door suggest that what occurred was not a "heat of the moment" event where such thoughts may have not entered the minds of the individuals concerned but rather an activity that it was known was going to occur in relation to which precautions needed to be taken. Notwithstanding this the appellant claim such precautions were not taken.

71. The appellant claims they were discovered by Julian's father who beat them both but that he was able to escape when the man grabbed his son. It is not implausible in such a situation that the appellant would have been able to escape but it must be remembered that the appellant claimed that he was naked at the time he was discovered. The appellant claims to have run in his earlier statement when discovered but in reply to questions in cross examination today claimed that he was able to stop and get dressed and then escape. There is an arguable contradiction between a claim to have run for a fear of one's life and the need to get out of the property but also being able to pause to get dressed before running without any adverse consequences being suffered at that point from this angry parent.

72. Mr Tufan in his submissions also referred to the point in evidence regarding the money the appellant claims was taken from his father's till. Previously the appellant claimed he took the money from the till before his father attacked him yet in his oral evidence he changed his account.

73. It was also submitted that the appellant claims to have been at school with Julian and that Julian's father, a local builder, had worked for his father, yet the appellant was unable to confirm the surname of these individuals was itself damaging to the appellant's credibility.

74. In response, it was submitted that the reasons provided by the Secretary of State in the reasons for refusal letter are not consistent with the alleged relationship and a misunderstanding as asserted. It is also alleged the refusal does not engage with the claim made by the appellant. The core of the claim was that a relationship developed in September which became physical on 5 December when they were discovered by Julian's father. It was asserted on the appellant's behalf that his account was credible and the appellant had discharged the burden upon him to the required standard to prove the truth of what he was saying.

75. The naming issue is a relevant aspect of the evidence. Whilst it would be easy in cases of this nature to accept what the appellant says is what he feels without more, there is still the requirement for any decision-maker to consider all the evidence relied upon by both parties and to ascertain how the individual pieces of the jigsaw fit together. There is nothing to say that an individual's statement regarding their feelings and attractions is the determinative factor although it may be a matter that warrants great weight being placed upon such a statement in the absence of evidence that might show less weight should be attached.

76. The appellant was asked about Julian. Whilst it is accepted that as a Christian name, as that term is understood in the United Kingdom, it is not disputed that Albanian nationals may have this first name as indeed a well-known Albanian footballer does. It is unlikely, and has not been made out, that a person's identity as a member of a family group in Albania is established by their first name. What may be of more importance is their family name as strong families, through marriage, home, and children are of importance in Albania especially in the more traditional northern regions from where the appellant claims to originate. It has been said that "the family unit is a ribbon that runs through the unique tapestry of Albania's social fabric". It is also important to consider the importance of a family identity if a dispute arises. Since the 15th century, many people in Albania, and particularly in the more traditional northern area, have lived their lives by a social code called the Kanun, which instructs followers on issues including marriage, religion and ownership. When someone suffers a humiliation or dishonour, the code allows killing — or blood revenge. The code traditionally directs that male members of the family in dispute are those against whom revenge may be taken making it important to identify who such members are. Family or clan identity are therefore key issues.

77. Who a person is and with which family or clan they are identified is itself part of the fabric of Albanian society and a matter that one would anticipate would be known to those in an individual's area. Without such knowledge, how could a

person know they were speaking to associating with or proposing to marry an individual from an opposing clan who may be the subject of a blood feud and in relation to whom any such association could bring dishonour upon themselves or their own family. Without knowing the identity of an individual how could a person know that they are not associating with persons that may put their own safety or lives at risk.

78. Despite the issue of personal identity being of such importance the appellant claimed not to know Julian's full name claiming he only know him by his first name. This was despite being in the same class at school in an area with a relatively small population where it is not arguably unreasonable to have expected the appellant to have known these details. This lack of knowledge was reinforced by an answer in cross examination in which the appellant claimed not to know the family name or second name of Julian's father despite this person being a builder in their local area and having undertaken work for his father. Indeed, without knowing the family name or family ties how would a person in Albania be able to establish between the family connections of two people with the first name 'Julian'.

79. The importance of such personal identity is that the appellant identifies the real risk as arising through his connection with Julian and that his involvement with this individual is the manifestation of his true feelings. This is therefore a cornerstone of his claim which, if not credible, arguably casts doubt upon the core aspect.

80. It may be in the United Kingdom there has been a change in social attitudes with less formality concerning naming conventions and more use of Christian names even on initial meetings in some commercial organisations, but the importance of the surname still remains the means of identifying family connections and a person's identity.

81. It also arguably irrational for the appellant to have responded that he did not know Julian's full name as all they did was speak about his problems. Part of the appellant's case is that he knew that how he felt and what he was doing was wrong as it is common knowledge in the traditional areas in Albania, where Islam is the dominant faith, that same-sex relationships are forbidden. The appellant claims that rather than establish who the person actually is and family connections they spoke about private matters together which could, in a society such of Albania, itself give rise to a real risk of serious harm especially if such conversations were undertaken with the "wrong family" member.

82. Mr Collins at the error of law hearing was critical of the First-tier Judge for not factoring into the assessment of the evidence the feelings that may have existed in young people discovering their sexual identity and how that would factor into the factual matrix rather than approaching the matter on an unemotional evidential basis. It is accepted that emotions are strong driving forces and that with any young couple or individual growing from childhood into maturity and eventually adulthood these are factors that must be properly considered. They cannot, however, be considered in isolation and but must be considered together with all the other aspects of the evidence.

83. It is not found to be credible that the appellant would not know the full family identity of the individual concerned if they associated in the school environment for some time prior to the events the appellant claims gives rise to a real risk occurred, and were as close in terms of attraction as alleged.

84. It is also noted above that in cross-examination the appellant changed his evidence in relation to the money that was taken from his father's till. What is not explained is how the relatively small amount of money the appellant claims he had in his initial evidence was sufficient to allow him to leave Albania and travel to the United Kingdom in terms of even meeting the costs of basic necessities. The amount of money taken, by reference to the cost of a cup of coffee, does not establish how the appellant was even able to survive with so little money. I find his account of this journey to the United Kingdom also raises credibility issues.

85. The first question, is the appellant telling the truth about past events as claimed, can perhaps be rephrased in an evidential sense and replaced by the question "has the appellant discharged the burden of proof upon him to the lower standard applicable to appeals of this nature to establish the truth about past events as claimed". My finding on this particular issue is that although the appellant has maintained his claim in relation to his sexual identity and the incident with Julian there are a number of evidential concerns which when taken together lead to the primary finding that the requisite burden of proof has not been discharged to prove the appellant is gay, as claimed, or that he would be treated as gay by potential persecutors in his country of nationality.

86. Whilst others have recorded the appellant facing emotional difficulties since arriving in the United Kingdom the reasons advanced for the same by the appellant have not been shown to be made out to the required standard.

87. Some organisations suggest that as proof of an individual's sexually orientation is difficult to establish on an evidential basis, based upon the concept of difficulty in proving how one feels, this first step should be bypassed and the focus be upon whether a person would face a real risk on return if what they are claiming is true. Whilst such an approach may simplify the process and be attractive to some, in adversarial proceedings such as those before the Immigration Tribunal it is necessary to maintain the structured approach to these cases set out in *HJ (Iran)* and answer the questions posed by the Supreme Court in that important decision.

88. The second question posed by Mr Collins is dependent upon a precedent finding namely that first question is answered in the appellant's favour. This is the importance of the words "if so" before "does the appellant have a well-founded fear of persecution or serious harm from his and/or the named individual's family". As the primary finding is not in the appellant's favour this question does not arise as the appellant has failed to establish the basis on which he claims to face a real risk of harm return is credible. As no other cause of risk was established the appellant has not discharged the burden of proof upon him to the required standard to show a well-founded fear of serious harm from his or Julian's families.

89. The issue of sufficiency of protection was clearly considered in the earlier Country Guidance case and whilst not a relevant factor in this case where no real risk in a home area has been established requiring the protection of the authorities, it is accepted that the police may in the more traditional areas be less willing to intervene and assist than in areas such as Tirana. The appellant's expert sets out her own observations in relation to the attitude of the police but whether there is an adequacy of protection to the *Horvath* standard will have to be considered in a different decision.

90. What this Tribunal will comment upon by way of observation is the comment by the country expert in relation to internal flight and options available to those who do face a threat from family members as a result of sexual orientation and whether there exists a viable and reasonable internal relocation option. In any case this is a fact specific assessment. The country material speaks of same sex individuals facing harassment and discrimination from members of the population and the greater risk faced by those who are transgender possibly because the appearance of some makes their position and self-identity more visible to others. It is accepted that some politicians have openly expressed hostility against LGBT individuals, one particularly vocal politician having appeared on television expressing views that in many countries would have him arrested for inciting hatred, violence, and expressing discriminatory views and opinions.

91. The fact action has been taken is demonstrated by the reference in the appellant's expert report to the activities of the Albanian State, which is seeking EU membership, including the creation of a shelter. Whilst the author of the report seems to minimise the importance of this facility, providing information that is not wholly accurate, it is an important development. The shelter was set up in December 2014 at an undisclosed location within Tirana with the support of the United States Agency for International Development, the British Embassy in Tirana and the Albert Kennedy Trust. A plaque on the building also confirms that it has been made possible through Assist Impact and in partnership with the Aleaca LGBT and ProlGBT.

92. Whilst the shelter may have a limited number of beds its purpose is to enable young people aged 18 to 25 facing rejection and violence at the hands of members of their family due to their sexual orientation to avoid having to face homelessness and to live within a supportive and protective environment. Comment by the expert that there is no assistance is factually incorrect as the shelter has an allocated social worker responsible for assisting young people staying there in obtaining accommodation, employment, and medical and other assistance with a view to enabling them to leave the shelter and live within Albanian society, more likely than not to be within Tirana, free from harm. Funding is provided by the US Department for International Development.

93. Those in the shelter include individuals abandoned by their families and provides medical referrals for both physical and psychological issues. Its stated aim is to support provide support to enable people to go out into the community and live a normal life.

94. Mr Collinson's initial submissions accepted the appellant would not face a real risk in Tirana and it was not made out that an approach through the respondent and connections with the British Embassy would not enable the appellant to be allocated a place at the shelter or for appropriate facilities to be made available if his claim was found to be credible. It was not therefore, arguably, made out that even if the appellant faced a real risk in his home area that there will not be a viable internal relocation option to Tirana that it is reasonably for him to avail himself of in all the circumstances. Although the appellant claimed he had a cousin in Tirana his evidence in relation to any real risk arising from the same was not at all persuasive and appears to have been introduced solely as a means of trying to exclude Tirana as a possible place of relocation. The appellant did not establish any real risk in the Albanian capital from family members or associates or any real risk of harm sufficient to amount to persecution entitling to the appellant to a grant of international protection for any reason.
95. The alleged risk of being discovered as a result of the need to register on the civil register is a matter that would have been considered by those running the shelter who provide facilities and systems to specifically protect individuals from their families.
96. The appellant's assertion that skills he has developed as a motor mechanic and training in the United Kingdom will be of no benefit has no arguable merit as Albania, like many European countries, has cars and lorries and it is not made out the appellant does not have transferable skills. These are, also, areas in relation to which support services are available.
97. The appellant has not established an entitlement to a grant of international protection based upon a real risk of serious suffering serious harm from the Albanian State or from individuals from which the State is unable or unwilling to provide an adequacy of protection or that it will be unreasonable for the appellant to return to Albania pursuant to paragraph 276ADE(vi) of the Immigration Rules.
98. Having considered the matter with the required degree of anxious scrutiny and having reflected upon both the submissions made, country conditions, and evidence received, in light of the failure of the appellant to substantiate his case, this appeal is dismissed.

Decision

99. **The Immigration Judge materially erred in law. I set aside the decision of the original Immigration Judge. I remake the decision as follows. This appeal is dismissed.**

Signed…….
Judge of the Upper Tribunal Hanson

Dated the 3 October 2017