



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

Appeal Number: PA/06908/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 28<sup>th</sup> July 2017**

**Decision & Reasons Promulgated  
On 11<sup>th</sup> August 2017**

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**MISS G M  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr J Collins, Counsel, instructed by Marsh & Partners  
Solicitors

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

**DECISION AND REASONS**

1. The appellant is a citizen of Albania born on [ ] 1992 and is female. She had a child born on 4<sup>th</sup> January 2016 in the United Kingdom.
2. The appellant appealed the First-tier Tribunal decision of Immigration Judge Mitchell dated 6<sup>th</sup> January 2017 in which he dismissed her international protection claim, her claim in humanitarian protection and under the ECHR and the Immigration Rules.

3. The appellant asserted that she attended university in Durres and whilst there started having a relationship with a neighbour from her home area, [F]. The appellant's family, she asserts, suspected a relationship with someone and they stopped her completing her education and she returned home on 26<sup>th</sup> April 2014. She continued her relationship and became pregnant. She told her sister, who then without the appellant's permission told the mother. The appellant was advised by her mother that she should leave Albania for good because if the male members of the family came to know about the pregnancy they would kill not only the appellant but the appellant's mother and [F] as well. The mother would be killed because she had failed in her duty to educate the appellant. The appellant and [F] would be killed because they had entered a relationship which was not approved of by the males of the family.
4. [F] made arrangements with the appellant for her to travel to Kosovo to his relatives and it was decided that the appellant should leave Albania and travel to a country where there was no easy access to members of the appellant's family. The United Kingdom was outside the Schengen Area.
5. The following day the appellant was outside her home talking to [F] on the phone although this was not known to the younger brother but when she refused to hand over the phone she threw it so it fell within [F]'s house. The younger brother then slapped the appellant. Later there ensued an argument between the brother and [F] because he refused to hand the phone over. [F] has indefinite leave to remain in Greece as he has lived there for many years.
6. The appellant left her home on 23<sup>rd</sup> June 2015 and travelled to Kosovo with [F] and he then returned to Greece. She stayed in Kosovo until 5<sup>th</sup> December 2015 when an agent transported her to the United Kingdom where she arrived on 10<sup>th</sup> December 2015. She gave birth on 4<sup>th</sup> January 2016.
7. An application for permission to appeal against the decision of First-tier Tribunal Judge Mitchell was initially refused by Designated First-tier Tribunal Judge McCarthy, finding no error in Judge Mitchell's conclusion that the appellant was not a member of a particular social group, namely victims of domestic violence in Albania, no error in finding it was reasonable to expect the appellant to relocate within Albania despite the fact that she may risk of discrimination and no error in the application of the very significant obstacles test.
8. That was not the end of the matter and the application for permission to appeal was renewed to the Upper Tribunal and granted by Upper Tribunal Judge McWilliam, who stated: "In respect of paragraph 7 of the grounds it is arguable that the judge, having found that the appellant was credible, did not make a clear finding as to whether she would be at risk on return (see [32], [34] and [72])." The matter was placed before Upper Tribunal Judge Rintoul, who on 11<sup>th</sup> May 2017 issued a Memorandum and Directions

stating that he was satisfied that First-tier Tribunal Judge Mitchell did make an error of law and he set the decision aside.

9. Upper Tribunal Judge Rintoul stated:

*“In summary, that is because of a failure properly to assess whether the appellant was at risk in her home area, and consequently to make proper findings as to the sufficiency of protection and/or whether it would be reasonable to expect her to relocate within Albania.”*

10. Upper Tribunal Judge Rintoul also stated: “The findings in respect of the appellant’s credibility are preserved, as are the findings of what happened in Albania. It will, however, be necessary to address the following issues”, and he set out a list of questions.

*“(i) Is the appellant at risk of ill-treatment in her home area, that is, Tirana, of sufficient severity to engage article 3 of the Human Rights Convention and/or amount to persecution?*

*(ii) If so, is there a sufficiency of protection for her, bearing in mind prior to action of police when contacted?*

*(iii) Would it be unreasonable or unduly harsh to expect the appellant to relocate within Albania given that she now has a child born out of wedlock? Would she be seen as ‘kurva’?*

*(iv) Is there any evidence that the appellant’s family would be able to trace her, given what is recorded in ‘Country Information and Guidance Albania: Background information, including actors of protection, and internal relocation’ CIG, SSHD at [2.2] and [12]?*

*(v) To what extent is the decision in LC (Albania) v SSHD [2017] EWCA Civ 351 relevant?*

*(vi) If the appellant is at risk of serious harm, is that for a Convention reason, that is, on account of membership of a particular social group? If so, what is that group?”*

11. It is notable that paragraphs 31 and 32 of the decision of Judge Mitchell set out the following:

*“31. The Secretary of State has taken a number of credibility issues concerning the appellant’s claim. As Mr Collins highlighted the appellant’s account has been remarkably unchallenged. The issues raised by the Secretary of State are somewhat weak. The appellant’s account is entirely consistent with the background material and the patriarchal society that exists in Albania. The appellant has had the opportunity to travel throughout the Schengen area of the European Union. Her accounts that she wished to travel to an area where her family would not have ready access seems perfectly reasonable.*

32. *The Secretary of State has highlighted the fact that the family appear to wish the appellant to make something of herself by allowing her to go to university but then considers is contrary as they then stopped her attending university as they suspected she was in a relationship with another man. In the patriarchal dominated society of Albania this may well make perfect sense to an Albanian family and I do not consider that the fact that it is somewhat contrary in approach undermines the credibility of the appellant. Having considered the evidence as a whole including the oral evidence of the appellant and the documentary evidence that has been adduced I do conclude that the appellant's account is credible."*

12. I address the questions in turn.

13. First, is the appellant at risk of ill-treatment in her home area, that is, Tirana, of sufficient severity to engage Article 3 of the Human Rights Convention and/or amount to persecution? The appellant gave evidence that she was from a traditional northern family and attended university with their permission and once they even suspected her of being in a relationship they stopped her attendance. As the judge stated at paragraph 58 of his decision, *"there has been no history of violence in the past"* and *"the appellant's situation is, however, that there has been no domestic violence although it is arguable that the violence used against the father of her child is indicative that there may be violence in the future"*. I find that it would be speculative on the evidence. The judge also recorded, however, at paragraph 52 that *"no crime against the appellant has been committed and she has not been threatened in any way"*. He found at paragraph 55:

*"The attack on [F] was in the first week of June 2015 but the appellant was able to remain in the family home until 23<sup>rd</sup> June 2015. She was not threatened or beaten by any male members of the family during the intervening weeks between the phone incident with [F] and the younger brother and her departure. That is indicative that the risk to her of violence within the family is low and that domestic violence although being widespread in Albanian society is not the norm or likely in her household."*

14. I note that Mr Collins accepted that there had not been past violence to the appellant. Indeed it seems clear that she was able to remain in the house.

15. The fact that [F] was beaten but, as the judge found, there was no history of violence to the appellant, only to the said boyfriend, [F], and that was because he had failed to return the phone. As the judge recorded at paragraph 36:

*"The appellant's family have not used violence against her in the past - apart from a single slap by a younger brother. There is no history of*

*violence against family members that I have been informed of. The attack on [F] was not by the family but by other people although it is assumed that it was instigated by the family."*

16. It is also speculation to conclude that the alleged assault on [F] was as a result of his relationship with the appellant.
17. I am therefore not persuaded that the appellant is at risk of ill-treatment in her home area, that is, Tirana, of sufficient severity to engage Article 3 of the Human Rights Convention and/or amount to persecution.
18. It is stated that the family are from the North and relocated to Tirana and that the family therefore still retain the traditional mores of those who have lived in the North. Nonetheless, despite that, I find past history does not indicate that this family would instigate violence on the appellant, albeit that she was removed from the university in 2014 because she was suspected of having a relationship. That she was sent to university shows a more liberal approach.
19. It is argued that the appellant will have been perceived to bring shame on the family because she will return with a child that has clearly been born out of wedlock. It was the appellant's speculation that her mother thought she would herself be at risk as well as the appellant and [F]. However, it was stated that her mother had assisted her and I note that the brother lives in the United Kingdom. There was no suggestion that he had attempted to locate her within the Albanian community.
20. There is nothing within the evidence which substantiates her fear that she would be at risk from her family and the material does not assist on this point, given that she has not been threatened or ill-treated by them in the past despite having suspected a relationship. There is no indication that the family would actively seek her out to harm her and the judge found that she had remained in the family home after even after suspecting the relationship.
21. As such I am not persuaded that she is at risk on return to her home area.
22. Secondly, and even so, if I am wrong about that, would there be sufficiency of protection for her, bearing in mind the prior action of the police when contacted?
23. The evidence taken at its highest is that when the boyfriend asked the police what they should do there was nothing which warranted being reported and therefore it was unsurprising they were not in a position to assist. It can be concluded that the boyfriend and the appellant had approached the police but without any specific crime having been committed, which is what the judge found at first instance.
24. Indeed, the background evidence suggests that there would be assistance, Country Information Guidance - Albania: Women fearing domestic violence, April 2016 sets out the attitudes and responses to women facing

domestic violence at section 6. At paragraph 6.2.4 the report indicates that it was clear there was a well-structured and functional vertical organisation and reporting line regarding domestic violence within the Albanian police and:

*“6.2.4 In total, the country counts 43 police commissariats covering 482 zones. Each zone is covered by one zone inspector, therefore, in total, there are 482 zone inspectors who are the frontline staff responding to domestic violence among other areas of responsibilities they have.*

*6.2.5 The same Data Centrum report noted that, according to its own survey of 733 individuals of whom 23 were victims of domestic violence, based on respondents’ own personal experience or the experience of friends or family, 74 percent said that the police were effective in immediate reaction to domestic violence incidents, 64 percent said the police were effective in support/assistance given to victims of domestic violence, 56 percent said the police were effective in prevention of domestic violence.*

*6.2.6 Of the 23 respondents who had personally experienced domestic violence, most were satisfied with the quick response of the police, but some were not satisfied with the behaviour of the police, claiming that they were not supportive and polite, or did not provide information about services or rights. Data Centrum’s study notes that weaknesses of the police in addressing domestic violence, as reported by the police and other stakeholders, include the following: understaffing; high number of staff transfers; low number of female officers; lack of psychologists and social workers at the commissariat level of the police; lack of private interviewing space at commissariat level; limited resources, such as computers, other technology and vehicles; lack of emergency funds for victims.”*

25. Based on the country guidance information I conclude that there is sufficiency of protection for women in relation to domestic violence. **AM and BM (Trafficked women) Albania** and **TD and AD (Trafficked women) (CG)** were cited and paragraph 182 of **AM and BM**. Paragraph 182 in fact related to sufficiency of protection in relation to victims of trafficking. There was no indication in this instance that the appellant had indeed been trafficked. This places a wholly different emphasis on the sufficiency of protection. What is clear in this case is that when the police approached they were approached by [F], the man, and there did not appear to be an outright suggestion that he would not be assisted. It was not the appellant who approached the police.
26. It is accepted in the Country Information and Guidance Albania that there have been a number of legislative measures undertaken to improve the

situation of women in Albania which are specifically designed to protect them against domestic violence but although the appropriate legislation is now in place implementation is not fully effective. Although the law is identified as not always effective there have nonetheless been a significant number of prosecutions.

27. The third question is would it be unreasonable or unduly harsh to expect the appellant to relocate within Albania given that she has a child born out of wedlock? Would she be seen as kurva?
28. It was argued that internal relocation would not be viable as it would be unduly harsh. In **AM and BM** the Upper Tribunal concluded at paragraph 187 that:

*“To that should be added the difficulties for a single woman to reintegrate into a society where the family is the principal unit for welfare and mutual support as well as, it appears, the channel through which employment is most often obtained. We have therefore concluded that internal relocation is unlikely to be effective for most victims of trafficking who have a well-founded fear of persecution in their home area, although once again we consider that it is important to consider each case on an individual basis.”*

29. **TD and AD** stress the problems of single women but added at paragraph 107: “We do not accept that it is, in general, ‘impossible’ for a woman to live on her own in Tirana, as asserted by Professor Haxhiymeri.”
30. The various factors in a non-exhaustive list were identified in **TD and AD** and these included the social status and economic standing of the family, the level of education of the victim of trafficking or her family, the victim’s state of health and mental health, the presence of an illegitimate child, the area of origin, age and what support network would be available.
31. It is clear that this appellant has a reasonable level of education as she attended university and is resourceful and she has not been trafficked; as such I do not accept that she would be seen as ‘kurva’. The social status and economic standing of her family is such that they were not considered to be particularly influential or powerful (or indeed have the inclination to track her down) and that she has a reasonable level of health and she is of a young and fit age. What is clear is that she does return with a child but I note that the appellant was assisted by [F]’s family whilst she was in Kosovo for six months and that the evidence given was that he was a wealthy man. Her evidence is said to be credible and although no findings were made by the First-tier Tribunal Judge as to the support that he might offer her I did raise this issue at the hearing before me and I am not satisfied that the boyfriend, who has assisted her for months including transporting her out of Albania organising her accommodation and care after her relocation to Greece, and transporting her to the UK, would not be prepared to assist her on her return to Albania. I note that she has never worked and has the 18 month old child but I conclude that with his

support she would, with her resilience and resourcefulness shown by travelling to two different countries when pregnant, be able to withstand any discrimination that she might meet.

32. The fourth question was whether the appellant's family would be able to trace her, given what is recorded in the Country Information and Guidance Albania at [2.2] and [12]. First it is not accepted that this is a family with power or influence and it is apparent that although the appellant stated in her evidence that she wished to be taken to a place which was well away from her family, she knows she has a brother in the United Kingdom.
33. Could she relocate albeit that her family have shown no interest. It is accepted that the appellant is from a very big family now based in Tirana and the Country of Origin Information and Guidance at 12.1.1 indicates that individuals moving within Albania must transfer civil registration to access public services.
34. The CIG at 12.1.1 indicates that the Constitution and law provide for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights. Although there was a report of 2014 from the OECD suggesting that women may have to seek permission from their husbands or family before travelling within Albania, a report from Freedom House in its Freedom in the World 2015 report stated that "Albanians generally enjoy freedom of movement and choice of residence or employment". There is no indication that the appellant would be unable to provide suitable documentation on her return to Albania and that she would not be able to access public services. The fact that she might stand out as a single woman with a child would not necessarily inhibit her movement around Albania.
35. I was invited to find that the use of shelters was not of any assistance to the appellant and this was in part in line with the requirement to relocate to a different part of Tirana. It is quite clear that there are shelters available from Section 7 of the CIG. There are shelters in Tirana and that is an indication that they would not accept victims without a court order. As there has been no suggestion of violence to the appellant, no solicitation of the police and no court order it would suggest that the appellant would not be able to access a government shelter. The report at 7.3.1, the CIG on domestic violence, did identify shelters outside Tirana which were run by NGOs which will accommodate those without a court order.
36. It was suggested that these were insufficient but I note at the close of the decision letter that the appellant can also take advantage of the Assisted Voluntary Return Service, which assists with the reintegration into her country of return.
37. There were indeed various sources of information on the shelters and the Secretary of State's refusal letter identified the Canadian Immigration



Service's report "Domestic violence, including legislation, state protection and support services available to victims, April 2014" identified a further number of shelters available. Although they may be limited in number I find that the appellant has the resources, albeit with a small child, to relocate to a shelter if required.

38. She has not sought assistance from the police and she has failed, to my mind, to demonstrate that the authorities of Albania would be unable or unwilling to offer her protection if she sought it. Even if that is the case I find that she would be able to seek assistance and protection within a shelter. There are shelters throughout Albania which can provide support services for women and children and although she may face some practical difficulties in starting life in a new place I do not accept that she would be totally bereft of support.
39. On the fifth question, it was agreed amongst the representatives that **LC (Albania) v SSHD** [2017] EWCA Civ 351 was not relevant in this instance.
40. Lastly, I do not accept that the appellant forms part of a particular social group. **DM (Sufficiency of Protection, PSG, Women, Domestic Violence) Albania CG [2004] UKIAT 00059** considered the situation and concluded that women in Albania did not constitute a particular social group unless there were other characteristics. It was argued by Mr Collins that this decision was made before the landmark decision of the House of Lords in **K and Fornah [2006] UKHL 46** and this meant that female victims of domestic violence in Albania formed part of a social group. The cases of **AM and BM (Trafficked women) Albania CG [2010]** refers to trafficked women. This appellant, however, has not been trafficked and has not experienced domestic violence. I find her fear speculative.
41. The Country Information and Guidance - Albania: Women fearing domestic violence report was published in April 2016 by the Secretary of State and appears to conclude at paragraph 2.2 that women at risk of domestic violence in Albania are not considered to form a particular social group within the meaning of the 1951 UN Refugee Convention because although they share an immutable or innate characteristic - their gender - which cannot be changed and although traditional views of their subordinate position in society are still prevalent in parts of the country, in general, in view of their equality under the law and the general availability of state protection against domestic violence they are not now perceived as different and do not have a distinct identity in Albanian society.
42. The situation in **DM** with respect to paragraph 9 was that there were very specific circumstances under which it was held there was a lack of sufficiency of protection for women generally in Pakistan and that there were legal processes which could be set in motion against them which rendered them virtually powerless. That was an entirely different situation from that propounded in relation to Albania.

43. Mr Collins cited **AM and BM (Trafficked women) Albania CG** and referred to paragraphs 160 onwards. Part of the argument of Mr Blundell on behalf of the Secretary of State in that instance was that there was nothing in the situation of the victims of trafficking in Albania to indicate they would be identified by Albanian society at large. By contrast the appellant's representative, Mr Jones, referred to the speech of Baroness Hale of Richmond in **Hoxha [2005] UKHL 19**:

*"163. The arguments put forward by Mr Jones referred to the speech of Baroness Hale of Richmond in Hoxha [2005] UKHL 19 where she had said:-*

*'37. If what they fear is capable of amounting to persecution, is it for a Convention reason? It is certainly capable of being so. In R v Immigration Appeal Tribunal and Another ex parte Shah [1999] 2AC 629, this house held that women in Pakistan constituted a particular social group, because they shared the common immutable characteristic of gender and were discriminated against as a group in matters of fundamental human rights, **for which the state gave them no adequate protection**. The fact of current persecution alone is not enough to constitute a social group; a group which is defined by nothing other than that its members are currently being persecuted would not qualify. But women who have been the victims of sexual violence in the past are linked by an immutable characteristic which is independent of and the cause of their current ill-treatment. They are certainly capable of constituting a particular social group under the Convention."*

44. The Tribunal in that case found that the central issue before them was how the former victims of trafficking for sexual exploitation would be identified in Albanian society. It was accepted that they would be treated as kurva, that is women considered not to comply with the strict Albanian mores of how to conduct themselves. In fact, the group was much narrower. It would appear that the Tribunal found:

*"The fact that they had been trafficked would be an obvious inference that would be drawn by the wider population if they went to a shelter and were in that shelter for some time. Not only do they share that characteristic but that is a characteristic by which they would become known in the wider society. Certainly, in the eyes of those who would be most likely to be the actors of persecution - those who had trafficked them in the first place they would clearly be considered to be members of a particular social group - those who had been trafficked by the traffickers and therefore those whom the traffickers might consider to be either their chattel or to be a danger to them."* (Paragraph 165).

45. However, that is not the case here. It was accepted that the appellant was not someone who was trafficked and therefore there is not that automatic narrowing of the group but secondly there was no indication that the appellant had been a victim of sexual violence in the past, which is independent of the cause of her current ill-treatment or perceived ill-treatment. Thirdly I do not accept that there is insufficient protection from the state because she would not be reporting that she was trafficked.
46. I find that her Article 2 and 3 claims fall with her asserted asylum claim as does her humanitarian protection claim.
47. I turn to the Immigration Rules. Under Appendix FM neither the appellant nor her child are British citizens and therefore she cannot comply with the Immigration Rules.
48. I turn to paragraph 276ADE and find that she has not lived in the UK for twenty years but moreover there are no significant obstacles preventing her reintegration into Albania. I have considered the aspects of risk above. I note she spent the majority of her life in Albania including her formative years and speaks Albanian.
49. I consider the child's rights under Section 55 and note the young age of the child but it is in the best interests of the child to remain with the mother. It is in the interests of the child to have stability and continuity and note that the child is an Albanian national and will be able to avail himself of education and healthcare facilities in Albania. The child has spent a very short time of its life in the UK and it would be in its best interests to reside in Albania with the mother. The COIR Albania dated April 2012 confirms that there are health facilities and education facilities in Albania and there was no evidence to suggest the child would be denied access to public services as an Albanian citizen.
50. I find that there are no compelling circumstances and I therefore dismiss the appeal on all grounds.

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

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Upper Tribunal Judge Rimington