Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13772/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 17 July 2017	**On 18 July 2017**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

BX
(anonymity direction made)

Respondent

Representation:

For the Appellant: Miss Isherwood Senior Home Office Presenting Officer.
For the Respondent: Mr J Collins instructed by Marsh & Partners Solicitors.

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Sethi promulgated on 10 February 2017 in which the Judge dismissed BX's appeal on asylum grounds but allowed the appeal on humanitarian protection and Articles 3 and 8 ECHR grounds.

2. The core finding is that as a result of BX returning to Albania as a single mother with a very young child she would be exposed to a real risk of future abuse and exploitation in an attempt to make a life for herself and her child amongst a hostile community, and would not be able to re-establish any kind of normal life in Albania for herself and her son [59]; that BX faces a real risk of serious harm through domestic violence at the hands of the family members in her home area in respect of which she would not have a sufficiency of protection and that it would be unduly harsh to expect BX to relocate on her own as a single mother with a very young child within Tirana or another southern city; leading to a conclusion there was no safe internal relocation option available for BX and her child [60]. As internal relocation is not a viable option BX has demonstrated there are very significant obstacles to her reintegration into Albanian society leading to the appeal being allowed pursuant to paragraph 276ADE(1)(vi) of the Immigration Rules.

Error of law

3. The Secretary of State sought permission to appeal on one ground in the following terms:

> The appeal against refusal of asylum has been allowed on humanitarian protection and Article 3 and 8 grounds.
>
> The disposal of the appeal was squarely on the basis of findings that the appellant and her 18-month-old (approx.) daughter would be returning together and without the appellant's partner (who is also the child's father). This is clear from [54], [59] and [61].
>
> The Judge has referred to no sensible reason why the appellants partner cannot reasonably return with the appellant and their child. He is also an Albanian national. The only statement in the determination capable of explaining why he might not return is that he 'has been in this country since he was 15 years of age and has made his home here' [44].
>
> The Judge states [44] that the Home Office representative did not cross examine the appellants partner, 'and his evidence is therefore unchallenged'. With respect, this is neither here nor there. He has expressed what amounts to a mere preference to remain in the UK, rather than return with his family unit to the country of their nationality.
>
> All of the findings on internal relocation, ability to access a women's shelter or refuge, and risk on return are predicated on a finding that the appellant and her child would be returned without male protection. That finding is unsafe and inadequately reasoned, as is the outcome of the appeal.
>
> Permission to appeal is sought; an oral hearing is requested.

4. Permission to appeal was granted by another judge of the First-tier Tribunal. The operative part of the grant being:

> 3. In an otherwise carefully and well reasoned decision and reasons it is nonetheless arguable that as the Appellants partner confirmed in evidence that he would support the partner and child if they had to return, the judge should have lawfully explored possibilities of the Appellant, her daughter, and her partner returning together to

> Albania and internal relocation options available to them. It is arguable that there was no evidence of any direct threat to the Appellant and it is further arguable that the established case law finds that there is a sufficiency of protection in Albania for the Appellant.

5. It is important to note the exact terms of the appellant's partner's evidence referred to by the Judge in the decision and alluded to by the Secretary of State when applying for permission to appeal. The Judge's note of the evidence is legible and appears in the following terms:

Name	[AC]
Adopt witness statement	Yes I do
How long have you lived in the UK	I lived here for over 18 years. I work here. I have friends here. I have my family. I lived here since I was 15 years.
If your partner had to return what would you do	I will stay here. I cannot return.
SSHD may say you could let her return and you could support for	I would support her financially but she will not be safe. My cousins in a blood feud for many years. [M B] and another clan -[C].
Why is that a problem for her	Because she is my partner back home. She'll be holding my surname back home as our son is [C]. She fears that a father will kill her as she ran away. She could be killed. By her father or another person she was supposed to marry.

6. The Judge also notes, in a comment annotated by a stared symbol within a circle, the words "No cross-examination".
7. Submissions made by Counsel representing the Secretary of State before the First-tier Tribunal are recorded by the Judge in the following terms:

> "Respondent's submission
>
> Cutting through long reasons for refusal letter – SSHD's position is no evidence of threats or history of danger to the appellant or her child from her father.
>
> Consider background information – need to decide
>
> Loving, unmarried or perceived married mother - sufficiency of protection?
>
> Not unreasonable to expect her to relocate to another part of Albania.

Partner confirms he would support partner and child if they had to return.

Maybe harsh for A to return as there is no real risk of serious harm whether under the Refugee Convention or H.P alone/Art 3.

No evidence of any threats.
Submit sufficiency of protection.
Could relocate with child.

S55 Best interests of child with mother although not ideal for child to be separated from father.

-S117(B)(6). Not a qualifying child.

8. Far more detailed submissions were made on BX's behalf in support of the appeal being allowed.

9. The first issue to note is that the appellants partner did not indicate in his evidence that he would be willing to return to Albania and does not, as alleged, wish to stay in the United Kingdom solely through choice. The partner clearly indicates that he cannot return to Albania and gives reasons why this should be so, based upon his own personal safety, which was not challenged or explored by the Secretary of States representative in cross examination.

10. There is no challenge to the factual findings of the Judge in relation to the core account leading to a real risk on account of BX infringing her family's honour by fleeing without permission and not marrying her current partner with whom she has had an illegitimate child. At [50] the Judge finds:

> 50. I find having regard to the appellant's previous perceived dishonour to her father (and to the man to whom she was promised) that should the appellant return to her home area in Albania now with the child of a man who is not her husband, that the shame that she is said to have brought to her family name would be further fuelled. I find that her fear that she would be at real risk of serious harm through domestic violence at the hands of her father, uncle or [AB] in addition to facing hostility, rejection and stigmatisation by her community at large is, in light of the background information, a credible one. This is the reason that I accept that the appellant originates Elbasan from a Muslim family. I find that there is a real possibility that religious and traditional values prevail in her home area through which domestic violence is likely to be viewed as '*a private, family matter and a normal part of marriage and family life*' rather than a crime.

11. The Judge was, therefore, required to consider the issue of sufficiency of protection from the authorities, which was considered in detail in the decision under challenge from [51] to [53]. At [53] the Judge finds:

> 53. I find that the background country information demonstrates that there is a real risk that the appellant would not be able to secure effective protection from the authorities in her home area against any attempt by her father, uncle or [AB] to cause harm. I find that further that as the appellant's conduct is a matter of 'honour' for the men concerned that it is also likely that her father, uncle or [AB] would be deterred by the threat of prosecution, even if prosecutions were effectively brought which the background information suggests they are often not. In addition I take into account that [AB] is the nephew of a former Chief of Police. I find that it is not

> implausible that he would have connections or influence amongst the local police which could encourage inaction in response to any redress sought by the appellant. I find that the appellant has no other connections to whom she could turn for support or protection in her home area. Albeit that she has a sister remaining in Elbasan I find that she would not be able to provide to the appellant with the practical measures required to ensure her safety. I am accordingly satisfied that the appellant would not be able to return to her home area, alone or with a child and reside there in safely.

12. The Judge thereafter considered, in light of the finding BX could not return to her home area, whether she could relocate elsewhere in Albania bearing in mind she would be returning as a young single woman with a child who is only 17 months of age. The Judge considered the possibility of the appellant and her son seeking refuge in a government run shelter outside her home area until such time as she was able to re-establish herself or make an application for entry clearance to join her fiancé in the UK [54]. The Judge found that even if BX could be accommodated in a shelter, the maximum permitted period for which is approximately two years, this meant she would leave with a child aged only three years of age and would still be a single young woman with a child without any male guardian or family support which would place her at real risk of stigmatisation on account of society's negative perception of her [55]. For the reasons set out between [54] and [61] the Judge did not find on the facts of this case that internal relocation was a viable option as it was specifically found that it would be unduly harsh to expect the appellant to relocate, as stated above.
13. The grant of permission refers to a careful and well-reasoned decision which is an accurate reflection of the matters considered by the Judge. The Secretary of State's assertion the Judge failed to explore the possibility that BX and her child could return with her partner, as if the Judge should have done more, has no arguable merit. The evidence of the partner was wider than that set out in the grounds seeking permission to appeal yet there was no proper or adequate exploration of whether the partner could return to Albania with BX or the child, providing the requisite male support the Judge clearly found will be lacking, and which was arguably instrumental in the appeal being allowed.
14. The Secretary State had ample opportunity to test the claims made by both BX and her partner during the course of the hearing yet failed to do so to the extent the author of the grounds seeking permission to appeal infers he should have done. Even if other Presenting Officers would have pursued this matter further, and made more detailed submissions, the fact of the matter is that the Judge was left with insufficient evidence on which to base a finding that BX's partner could return to Albania with her and with their child.
15. Miss Isherwood argues that the partner only has leave valid to 2019 and that the Reasons for Refusal letter asserted there was a sufficiency of protection and internal flight alternative. What has, of course, occurred in the interim since the publication of the reasons for refusal letter is the hearing at which the Judge received evidence, clearly considered the same with the required degree of anxious scrutiny, and has given adequate reasons for the findings made. As such, the weight to be given to the evidence was a matter for the Judge. On the basis of the allocated weight the Judge concluded as he did.

16. On the basis of the evidence made available no arguable legal error material to the decision to allow the appeal is made out. On the basis of the evidence made available the findings by the Judge are within the range of those reasonably available. The wish for what may be seen by some as the desire to reopen the case to relitigate the question of the partner's position does not, per se, amount to arguable legal error.

Decision

17. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

18. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated the 17 July 2017