



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

**Appeal Number: PA/07526/2017**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 12 January 2018**

**Decision & Reasons Promulgated  
On 18 January 2018**

**Before**

**UPPER TRIBUNAL JUDGE FINCH**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**OS**

Respondent

**Representation:**

For the Appellant: Mr. T. Tarlow, Home Office Presenting Officer  
For the Respondent: Ms M. C. Benitez of counsel, instructed by Fadiga & Co Solicitors

**DECISION AND REASONS**

**BACKGROUND TO THE APPEAL**

1. The Respondent, who was born on [ ] 2001, is a national of Albania. He left Albania on 1 April 2016 and applied for asylum in the United Kingdom on 13 May 2016.
2. He was interviewed about his application on 7 September 2016 but his application was refused on 25 July 2017.

3. The Respondent appealed against this decision and his appeal was allowed by First-tier Tribunal Judge Wyman in a decision promulgated on 19 September 2017 on the basis that he was entitled to protection under the Refugee Convention. The Appellant appealed on 22 September 2017 and First-tier Tribunal Judge Pooler granted her permission to appeal on 14 November 2017.

### **ERROR OF LAW HEARING**

4. Both the Home Office Presenting Officer and counsel for the Respondent made oral submissions and I have referred to the content of these submissions, where relevant, in my decision below.

### **ERROR OF LAW DECISION**

5. The Respondent is an Albanian national, who was born on 22 November 2001. On 25 July 2017 he was granted limited leave to remain in the United Kingdom until 22 May 2019, as an unaccompanied asylum-seeking child under paragraphs 352ZC to 352ZF of the Immigration Rules. Therefore, for the purposes of sub-paragraph 352ZC(c), the Appellant accepted that there would be no adequate reception arrangements for him in Albania if such leave was not granted.
6. The basis of the Respondent's application for asylum was that his father, [HS], had been arrested for drug offences in Albania on [ ] 2015 and that other criminals, who had not been arrested, believed that he had given the police information about him and claimed that he owed them money. As a consequence, they had abducted the Respondent in March 2016 and had told him to inform his father that, unless he repaid what was owed, the Respondent would be killed.
7. It was the Respondent's case that he went to visit his father at the 313 Prison in Tirana and told him what had happened and his father then instructed him to flee from Albania, which he did on 1 April 2016.
8. The Appellant did not initially accept that the Respondent was related to [HS] as claimed. However, prior to the appeal hearing, the Respondent's solicitors had submitted a supplementary bundle. This included a notarial declaration, dated 21 January 2016, by [HS], a divorce document, which confirmed his full name, date of birth and address and a further document from the criminal proceedings, which gave the same details. As a consequence,

First-tier Tribunal Judge Wyman found that [HS] was the Respondent's father and that the documents and press articles submitted by the Respondent confirmed his arrest and role as a prominent criminal. These findings have not been challenged by the Appellant.

9. Instead, the sole ground of appeal is that the First-tier Tribunal Judge's findings in relation to whether there would be a sufficiency of protection for the Respondent in Albania were inadequately reasoned and should be set aside.
10. In paragraph 75 of her decision, First-tier Tribunal Judge Wyman accepted that in general there was a sufficiency of protection for those fearing persecution by non-state agents in Albania. She noted that there was a functioning police service in Albania as the Respondent's father and over twenty other individuals had been convicted of drug dealing and other offences. But in paragraph 77 she went on to find that it was "certainly questionable as to whether the authorities would have helped the [Respondent] given his links with his father, a known drug dealer".
11. It was the case that the Respondent had not sought any protection from the police before fleeing from Albania. But he was only fourteen years old at the time and, as First-tier Tribunal Judge Wyman noted in paragraph 78 of her decision, it was "understandable that the [Respondent] on receiving information from his father that his mother should contact an agent (instead of reporting the matter to the police) undertook the steps his father told him to do...".
12. Counsel for the Respondent relied upon the fact that First-tier Tribunal Judge Wyman had referred to the Home Office Country Policy and Information Note on Albania in paragraphs 36, 54-59 and 73 of her decision. She relied upon the fact that paragraphs 9.2.5, 11.1.7 and 11.1.11 of the Note indicated that there was corruption within the police force in Albania. She also referred to pages 13, 56 and 59 of the Country Evidence Bundle submitted by the Respondent at the appeal hearing.
13. In addition, she relied on the fact that the police had not been able to prevent the Respondent being kidnapped by members of a criminal gang. However, the test of whether there would be a sufficiency of protection for the Respondent in Albania is a prospective one and the issue was whether if the Respondent were to be returned to Albania in the near future the State would be able to protect him from the criminals who had abducted and threatened him.

14. In paragraph 79 of her decision, First-tier Tribunal Judge Wyman found that “given the [Respondent’s] age and the circumstances around his family, [she] did not find that there is a sufficiency of protection for the [Respondent]”. However, she did not explain how his particular circumstances related to the country evidence on which she relied and, in paragraph 55, she went no further than stating that there were “instances of corruption and of the police having committed abuses”.
15. As a consequence, I find that First-tier Tribunal Judge Wyman did err in law by failing to give sufficient reasons for finding that there would not be a sufficiency of protection for the Respondent in Albania. However, the rest of her reasoning was cogent and detailed and I do not remit the appeal to another First-tier Tribunal Judge for this reason and because it would not be reasonable for the Respondent to be subjected to further cross-examination given his age.
16. It will be open to both parties to submit further evidence relating to sufficiency of protection at the remitted hearing before First-tier Tribunal Judge Wyman.

## **DECISION**

- (1) The Appellant’s appeal is allowed on the one issue of sufficiency of protection.
- (2) The appeal is remitted to the First-tier Tribunal Wyman for her to provide reasons relating to this one issue.
- (3) The findings reached by First-tier Tribunal Judge Wyman in relation to the Respondent’s identity and his father’s criminal history do stand as do her findings that there was no possibility of the Respondent, as an unaccompanied child, being able to relocate within Albania to avoid persecution by non-state agents.

**Nadine Finch**

Signed

Date 12 January 2018

Upper Tribunal Judge Finch