



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/12960/2017

THE IMMIGRATION ACTS

Heard at Field House  
On 13 April 2018

Decision & Reasons Promulgated  
On 19 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JM

(ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the Appellant: Mr T Lindsay, Home Office Presenting Officer

For the Respondent: Mr J Collins, of Counsel instructed by Sentinel Solicitors

**DECISION AND REASONS**

1. This is the appeal of the Secretary of State, but I will refer to the original appellant, a citizen of Albania, born on 18 March 2000 as the appellant herein. The appellant at the age of 15 left Albania on 9 May 2015 and travelled via Germany and Belgium to the UK, clandestinely, arriving on 7 July 2015. He applied for asylum on 24 August 2015, but this application was refused on 24 November 2017.
2. The appellant's claim was based on a fear of return to Albania on the basis that he had been trafficked as a child by a drugs gang, and raped.

3. The appellant's father was a police officer who faced problems with criminal gangs cultivating and dealing in cannabis. The appellant was recruited by the gang and forced to cultivate cannabis and deliver bags of drugs, which provided an income for his family. The appellant's relationship with the gang changed when they started to punish him for being late in his attendance and resulted on one occasion with him being raped. The appellant ran away from the gang and subsequently left Albania.
4. The respondent took the view that the appellant's claim was not credible. The respondent found that there were a number of material inconsistencies in the account and made a number of adverse credibility findings. In the alternative, the respondent concluded that there was a sufficiency of protection for the appellant in Albania and that he could internally relocate to a place of safety.
5. The appellant's case was supported by two witness statements and his oral evidence. His written and oral testimony was tested in cross-examination. Of relevance to this decision is the judge's summary of the appellant's oral evidence as follows:

34.....His father had not assisted him before he was raped despite the fact that he needed help and the appellant was now fearful how the father would react if returned. He thought the father would be ashamed and might kill the appellant.....

35....He stated that he had not sought to recontact his family. He had hesitated to do so as his father had not sought to prevent what had happened to him when he was sexually assaulted. He had first informed his father he was working for the criminal gang as soon as his role began. The father was also under the control of the gang. Initially the appellant had no problems and was recompensed. When the appellant eventually explained that he was not happy working for the gang, he was advised by his family not to leave as he would have nowhere to hide or to go to."

6. The judge directed himself to the relevant guidance and noted that he was assessing the evidence of a vulnerable witness. The appellant was a child (17 years and ten months) and was recounting events that occurred when he was a teenager. The judge found that the appellant had provided a "credible and consistent account" of his past experiences including that he was raped by a gang member. In his omnibus conclusion regarding credibility the judge at [53] stated thus:

"I also find it credible that the appellant was reluctant to seek support from his father who the appellant believed had merely acquiesced with the criminal gang and therefore accept the factual account from the appellant in relation to his claimed ill-treatment and forced labour and as a consequence find the appellant clearly would be at risk in his home area, if returned there."

7. Having reached that conclusion the judge recognised that he was required to consider whether a reasonable alternative place of relocation was available to the appellant and whether there would be a sufficiency of protection. The judge directed himself on the law appropriately and referred to relevant country guidance ([55] & [56]). He also referred to a relevant authority on the issue of sufficiency of protection as well as background evidence. The judge concluded as follows:

"54. .... I do not accept that there is a reasonable opportunity for internal relocation of the appellant anywhere in Albania, and particularly at a time when he remains a minor. I find he would still be at risk and would face unduly harsh circumstances. The **Home Office Country Policy and Information Note for Albania of July 2017** notes at page 48 that corruption is prolific

and widespread within Albania. An Organised Crime and Reporting Project notes that corruption is widespread and watchdog NGOs have expressed concern over the country's failure to curb corruption stating that whilst Albanian laws guarantee political freedoms they did not give corruption fighting bodies sufficient muscle. Although there were criminal penalties for corrupt public officials, the government did not implement such laws effectively. There are limited resources, investigative leaks and political pressure. Page 54, paragraph 30.1.1, in relation to freedom of movement, also notes that in order to receive government service, individuals moving within the country must first transfer civil registrations to their new community of residence and prove the legality of their new domicile through property ownership, rental agreement and utility bills.

55. I have considered the Upper Tribunal decision in **TD and AD (trafficked women) CG (2016) UKUT 00092 (IAC)** while this decision relates principally to the position of trafficked women in Albania, I find the principles are equally applicable to an unaccompanied minor. The decision notes that although in general there is Hovarth standards sufficiency of protection, this will not be effective in every case. The decision notes that whilst there are now in place reception and reintegration programmes for victims of trafficking, there will however be victims of trafficking with characteristics for whom living alone would not be reasonable. That decision notes that trafficking is a reality.

56. The decision further notes that whether trafficked women in Albania are at risk of persecution on account of membership of a particular social group, it will depend upon a number of individual circumstances including, but not limited to, their social and economic status, level of education, the victims state of health, the presence of an illegitimate child, the area of origin, age and what support will be available.

57. I accept that if returned to Albania, the appellant cannot return to his home area given previous abuse which occurred there. Even were he to be returned to Tirana, the appellant would be a minor and there would simply be no support network available to him. I find the majority of the above risk factors are equally applicable to a single male minor.

58. The appellant comes from the north of Albania. The decision in **AM and BM (trafficked women) Albania (2010) UKUT 80 (IAC)** notes that Albania is a country where, at least, internal relocation is problematic for victims of trafficking. It is unlikely to be effective for most victims of trafficking who have a well founded fear of persecution in their home area. The appellant is from the north of Albania. He fears his father, who he believes will still be under threats from the gang who abused the appellant.

59. I accept that the account which the appellant has provided indicates that at all material times he was a child. I find he remains a vulnerable person and that he does face a risk of being further targeted, abused and re-trafficked within Albania."

8. Accordingly, the appeal was allowed on asylum and human rights grounds (Articles 2 and 3).
9. The Secretary of State sought permission to appeal. The grounds of appeal are short and assert that the judge failed to consider relevant background evidence, namely, the United States State Department (USSD) report, quoted at §84 of the refusal letter. It was contended that the "evidence shows that there is a sufficiency of protection and a viable option on internal relocation. The failure to consider the terms of the refusal and the evidence relied upon is a material error of law."
10. At the hearing before me I heard submissions from both representatives which I have considered. I have no hesitation in concluding that the grounds amount to a disagreement with the judge's findings and are misconceived. I also find that Mr Lindsay's submissions stretched the scope of the grounds and, in other respects, raised

new grounds altogether. Before I address those matters, I turn to deal with the grounds as pleaded upon which permission is granted.

11. There is one ground of appeal. The ground, simply put, asserts that the judge failed to consider the terms of the refusal letter and the evidence relied upon by the respondent. In particular, it is asserted that the judge failed to consider §84 of the refusal letter, which quotes extracts from the "2016 US State Department Trafficking in Persons Report". As I observed at the hearing, §84 of the refusal letter quotes sections of the USSD report that deals with issues relating to "Prosecution", "Protection" and "Prevention". These sections in my judgement relate to the issue of sufficiency of protection and not internal flight.
12. Mr Lindsay submitted that the last sentence of the grounds quoted above (at [9]) was broad enough to include a challenge to the judge's findings on internal relocation. I do not agree. In my view, the grounds as particularised suggest that the challenge being made relates to the judge's consideration of sufficiency of protection. The challenge in the grounds is predicated upon the terms of §84 of the refusal letter, which quotes extracts of background evidence that relate to the issue of sufficiency of protection and thus I find that the reference to internal relocation in the grounds is misconceived. I am reinforced in this view by the terms of the grant of permission to appeal itself. Judge Ransley stated in the opening paragraph of his grant that: "The Ground of application challenges the Judge's findings that there is insufficient state protection for the appellant on return to Albania." I thus find that the respondent's challenge was limited to the issue of sufficiency of protection. There was no application to amend the grounds to include the issue of internal relocation but, in the event that I am wrong about the limited scope of the grounds, I will for the sake of completeness, deal with the judge's consideration of internal relocation below.
13. The judge at [44] referred to the principles set out in **AT (Guinea) v SSHD [2006] EWCA Civ 1889** and correctly identified that "it is the duty of an Immigration judge to give reasons for a decision and that this does not entail a requirement to deal expressly with every point, but to demonstrate that a duty has been discharged to ensure that parties to a decision understand why one had won, and the other has lost."
14. In my judgement, the judge discharged that duty. The issue of sufficiency of protection is highly fact-sensitive. The background evidence referred to at §84 of the refusal letter clearly relate to that issue. That evidence referred to the government's increased efforts in enforcing anti-trafficking laws and the prevention of trafficking, the number of prosecutions that had to date taken place and the training provided to the judiciary and law enforcement officials. There was further reference to the support available to victims of trafficking and indeed the inadequacies of such facilities.
15. The relevant question, in my judgement, is whether the judge reached a conclusion that was open to him on the evidence that was before him. The judge's failure to directly refer to the evidence contained at §84 is not in itself an error, and the respondent has not shown that the judge failed to consider the substance of the evidence contained therein. The difficulty with the respondent's complaint, as

properly acknowledged by Mr Lindsay, is that the extracts quoted at §84, taken from the 2016 USSD report, is no different in its content to the USSD 2014 report considered by the Tribunal in **TD and AD**, which the judge considered at [55] to [56]. Mr Collins further pointed out that the most recent USSD report of 2017 was also before the judge and couched in identical terms.

16. In the circumstances, I consider that it is simply misguided for the respondent to assert that the judge failed to take that evidence into account. He did not. The evidence relied upon by the respondent was not determinative of the issue of sufficiency of protection. Moreover, I note that the evidence at §84 is no different in terms to that set out in the respondent's own Country Policy and Information Note, which the judge specifically considered at [54]. The respondent's complaint that the judge failed to consider the evidence relied upon is thus not borne out on the face of the decision.
17. In the alternative, Mr Lindsay argued that the judge was wrong to consider **TD and AD** as that decision applied to women and not men, and that his conclusion that the appellant would have no support in Tirana was not supported by the evidence. Mr Lindsay sought to amend the grounds to this effect.
18. I refuse permission on these grounds. I find that there is no merit in the argument that the judge fell into error in his consideration of the evidence. In my judgement, the judge succinctly considered the evidence and gave adequate and sustainable reasons for his conclusion. The judge acknowledged the distinguishing feature of gender in this case from that of **TD and AD** but found that the principles therein were equally applicable to an unaccompanied male minor. Before me the contrary has not been demonstrated. This line of challenge is unarguable.
19. I also consider that the further line of challenge pursued by Mr Lindsay is also unarguable. Mr Lindsay contended that the judge failed to consider §97 of the refusal letter that relied upon the appellant's claim that he had family in Tirana. Mr Lindsay submitted that this was contrary to what the judge stated at [57] that no support network would be available in Tirana. There is no merit in this challenge. It is misguided and fails to consider the findings of the judge. The evidence before the judge, which he accepted, was that the appellant's father had connections to the gang and permitted him to work for them; that his father would be notified of his return; that he did not have contact with his family; his father had not sought to prevent what had happened to him, and his family advised him not to leave. Considering that evidence, the judge in my view was entitled to conclude that the appellant would have no network of support in Tirana. To that extent even if criticism can be made for the failure to specifically consider the presence of family members in Tirana, it is ultimately immaterial to the judge's overall evaluation of the evidence.
20. The judge accepted the primary facts, which he was entitled to do for the reasons he gave. The judge was dealing with the circumstances of a young vulnerable appellant who had been trafficked and abused. I see no evidence that the judge did not approach matters holistically. The determination must be read as a whole. The judge had regard to the background evidence and directed himself in appropriate terms on legal

matters. I find that it was open to the judge to rule as he did on the issues of internal relocation and sufficiency of protection.

21. Accordingly, the appeal of the Secretary of State is dismissed, and the decision of the judge shall stand.
22. The First-tier Tribunal made an anonymity direction and it is appropriate in my view that that should continue.

**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 him or any member of their 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 13 June 2018

Deputy Upper Tribunal Judge Bagral