



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

Appeal Number: PA/14069/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 21<sup>st</sup> December 2017**

**Decision & Reasons  
Promulgated  
On 6<sup>th</sup> February 2018**

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**MASTER M N  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Miss Z McCallum, Counsel, instructed by Sutovic & Hartigan Solicitors

For the Respondent: Mr P Duffy, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Albania. His appeal was dismissed by Judge O'Garro in a decision promulgated on 4<sup>th</sup> August 2017. The appellant is a minor who came to the United Kingdom following several years of claimed domestic abuse at the hands of his father in Albania. The grounds of application for permission to appeal state that the credibility of his accounts had been entirely accepted at all stages by the Home Office and that this had been conceded by the Secretary of State at the hearing

before Judge O'Garro who proceeded to deal with the hearing on submissions only.

2. There is a background to this appeal which was set out in the grounds of application for permission to appeal. The appellant's appeal to the First-tier Tribunal was originally dismissed on 3<sup>rd</sup> April 2017 by Judges Woodcraft and George but it was accepted that the appellant had suffered severe physical abuse from his father and had been informed of threats made to his father which concerned him directly. It was accepted that the appellant would have to relocate some distance from his family to avoid the threat of abuse and would require assistance on return. It was stated that "the centres for victims of domestic violence in Albania would at least arguably not be available for the appellant on return".
3. However, the judges refused the appeal because they considered that the appellant's maternal uncle would be able to support the appellant financially on return to Tirana.
4. The appellant appealed that decision on the basis that the First-tier Tribunal erred
  - (1) in speculating as to the ability of the appellant's maternal uncle to provide financial support in Tirana,
  - (2) ignoring the extensive background information about the failure of the Albanian police to deal effectively with domestic violence,
  - (3) conflation of very significant obstacles to the integration test in paragraph 276ADE,
  - (4) treating the appellant as a young adult rather than a child and
  - (5) taking the wrong approach to the test for internal relocation.
5. The respondent conceded these grounds of appeal and Upper Tribunal Judge Gill agreed that the Tribunal had erred in law for all the reasons identified by the appellant. An error of law was discerned in that decision and the matter remitted to the First-tier Tribunal for hearing de novo.
6. At the start of the fresh rehearing before Judge O'Garro the respondent stated that she did not dispute the credibility of the appellant's account and did not wish to examine him. The matter was dealt with by submissions only. The judge agreed.
7. In the decision of Judge O'Garro, which is presently under challenge, she accepted that the appellant was a minor, and that he formed part of a particular social group for the purposes of the Refugee Convention.
8. She accepted the credibility of the appellant's account of domestic abuse at the hands of his father.
9. She considered nonetheless there was sufficiency of protection in Albania for women and girls. She did not specifically consider adequate protection

for adolescent boys or give any reasons for rejecting the evidence as she found the appellant's evidence that he could not be accommodated or supported by his uncles or sisters to lack credibility and therefore there was an internal relocation problem despite the fact that the credibility of the appellant's evidence was not disputed.

10. She did not consider that returning the appellant to Albania would result in a breach of Article 8.
11. It was asserted in this instance that the decision of Judge O'Garro was flawed for a complete lack of procedural fairness afforded to the appellant in the proceedings and was flawed for its failure to have regard to the ample objective and subjective evidence.
12. The specific grounds pleaded were as follows:

**Ground (i)**

13. There was a breach of procedural fairness and principles of natural justice in that Judge O'Garro made adverse credibility findings against the appellant in respect of his evidence regarding availability of support on return in circumstances where
  - (1) the Secretary of State explicitly indicated that the credibility of the evidence was not disputed,
  - (2) the Secretary of State did not cross-examine the appellant and requested that the appeal be dealt with by submissions only and
  - (3) the judge accepted that the appeal be disposed of in this way and did not indicate any concerns in this regard nor that she herself wished to ask the appellant any questions.
14. In those circumstances, if the judge had any reservations of her own about the credibility of the appellant she should have highlighted these at the outset and afforded the appellant an opportunity to address the concerns.
15. As such the failure to do so meant that the decision suffered fatally from the lack of procedural fairness and should be set aside, **Osborn v The Parole Board [2013] UKSC 61.**

**Ground (ii)**

16. The conclusion that the appellant's maternal uncle and/or sisters would be able to support the appellant financially on return to Tirana was entirely unsupported by any evidence.
17. At paragraph 40 of her decision the judge stated she did "not find it credible that the appellant's uncle or his siblings would not want to extend a helping hand to him if he do [sic] not want to live with his parents for the reasons they are fully aware of".

18. At paragraph 41 the judge further found: “I find as the appellant’s maternal uncle was willing to get involved in sending him abroad to claim asylum, he should be willing to get involved in providing care and support to the appellant if he is returned to Albania now.” The judge reached this conclusion despite the appellant’s success on this exact point on appeal to the Upper Tribunal.
19. Further, at paragraph 42 the judge considered the appellant’s claim that his uncle would not help him for fear of what his father would do as “just speculation” without providing any further reason for that assessment. She concluded that the appellant “has reached employable age and should seek employment to support himself while he has the support of his sisters or uncles in providing him with accommodation”.
20. The appellant’s evidence on the lack of support he would receive from his family was well set out in great detail. In the light of the overall credibility the appellant’s evidence on this matter was sufficient to discharge the burden of proof on him. As a matter of commonsense, if the appellant were to reside with his sisters or family he could easily be located and would continue to face a serious risk of domestic violence.
21. There is no evidence to challenge the appellant’s assertion that his family did not have the financial means to support him.
22. In the circumstances the judge’s conclusion that the appellant could be accommodated and supported by his extended family was not only unsupported by evidence but patently irrational and should be aside.

### **Ground (iii)**

23. The judge erred in the assessment of whether there was sufficiency of protection in Albania.
24. In concluding there was sufficiency of protection for victims of domestic violence in Albania the judge relied solely on one report, that of the Swedish International Development Cooperation “Making homes violence-free in Albania”, see decision at paragraph 2. She failed to conduct a proper and circumstance-specific assessment of whether there would be sufficiency of protection.
25. The report in question dealt with gender-based violence against women and girls. Secondly, the report relied on one example and on one family being provided support. Thirdly, it identified Albania had a system to assist victims of domestic violence but the judge failed to deal adequately or at all with the voluminous objective evidence. There was extensive objective evidence dealt with the willingness or capacity of the Albanian police to deal with domestic violence cases.

### **Ground (iv)**

26. The judge erred in the approach to the best interests' analysis under Article 8 by applying Section 117B(5). The appellant relied on the case of **Rhuppiah v Secretary of State for the Home Department [2016]** that little weight should be given to a private life established by a person when the person's immigration status is precarious but the court could depart from that where there were compelling reasons. The appellant argued it was necessary to depart from the guidance in 117B(5) because of the "special and compelling character" of private life established as a child and because it is necessary to treat the best interests of the child as a primary consideration.
27. Permission to appeal was recently granted in the Court of Appeal to question whether Section 117B(5) can apply to private life established as a child in dealing with an adult's appeal, **Ayami v Secretary of State for the Home Department**.

### **Ground (v)**

28. The judge erred in failing to consider in substance whether the appellant would face significant obstacles on return. It was accepted that this dealt with adults only but was nonetheless the fact that the judge simply mistransposed Section 276ADE, stating that he had not lived here for less than twenty years. That was evident.

### **Conclusions**

29. As set out by Judge Macdonald in his decision granting permission, "if the judge had reservations of her own about the appellant's credibility these should arguably have been highlighted at the outset of the appeal". As set out in the Court of Appeal in **AM (Afghanistan) v Secretary of State for the Home Department [2017] EWCA Civ 1123**, "in making asylum decisions, the highest standards of procedural fairness are required".
30. I questioned Miss McCallum on the extent of the 'concession' which is said to have been made regarding the appellant's account. It is quite clear from the Reasons for Refusal Letter and the Secretary of State's decision at paragraph 50 that the appellant had previously briefly stayed with his maternal uncle in Albania and it was recited that his maternal uncle had contributed to helping him leave Albania. The Secretary of State stated:

*"It is therefore considered that you have a strong social support network that can assist you on return. You have also claimed in your witness statement (paragraph 6) that you have studied in Albania. Furthermore, whilst in the UK you have demonstrated considerable resilience, adaptability and fortitude by travelling to the UK alone. This is considered indicative that you are more than capable of adjusting to life in different countries, cities and cultures."*

31. As set out in the Rule 24 response, this stated: “A concession that the core account of past persecution is true cannot bind a judge to agree with the opinion of an appellant as to how another person would act in the future.” As stated, “the judge explains why he thinks that the appellant’s (no doubt sincerely held) belief that he would receive no help on return is speculative and unlikely to be correct. That is not the same thing as finding the appellant to be an incredible witness.”
32. Miss McCallum argued that the appellant had not been called to give evidence but, as I pointed out, this was the decision of the appellant’s representative although at that time the appellant was a minor.
33. That said, it is clear, and as pointed out in the skeleton argument of Miss McCallum, that the judge reasoned at paragraph 40:
- “I should state here that I do not find it credible that the appellant’s uncle or sisters would not want to extend a helping hand to him if he do not [sic] want to live with his parents for the reasons they are fully aware of...”*
- and at [42]:
- “The appellant also said that his uncle would not want to help him because he would be afraid of what the appellant’s father would do. I find this is just speculation on the appellant’s part.”*
34. There was an assertion that the Rule 24 response fundamentally misrepresented the nature of the concession made by the Home Office Presenting Officer and that a) the concession was not limited to the “core account of past persecution”; it affected *any evidence* in support of his asylum claim to which the appellant’s credibility was relevant and b) the judge was not bound to accept the appellant’s evidence as to how his maternal uncle and/or sisters could and would act in the future.
35. There is nothing recorded in relation to the asserted “concession” granted by the Home Office Presenting Officer. The Record of Proceedings merely state that there were “submissions only”. It was accepted that the appellant was abused in the refusal letter and the question was the risk on return.
36. Mr Duffy was not clear from the minutes that were available to him that there was any concession made by the Home Office Presenting Officer at the hearing. I note the record in the decision itself relates at paragraph 15 to *“the parties agree that this appeal would be dealt mainly on submissions”*. No record of a further concession was made and I can discern no reference to further concession in the Record of Proceedings.
37. Nonetheless, as made out by Miss McCallum, it is axiomatic that the appellant has a fair hearing and it is suggested that the appellant should have been called to clarify issues in his evidence in relation to credibility on the clearly critical issue of support on return. Indeed the reference by the judge to credibility may be just an unfortunate expression but if there

is acceptance of credibility on the core part of his claim it would be inconsistent to reject another part without giving clear and adequate reasoning. As such it was incumbent upon the judge if she had concerns about specific areas of his evidence to at least put those issues to him or at least advise the representative that there were concerns so that the opportunity was given to him to give evidence and address the issue. That is fundamental to the procedure and to the findings of fact within the decision.

38. In relation to ground (ii) the criticism of the judge's decision was that the conclusion that the appellant's maternal uncle and/or sisters would be able to support the appellant on return to Tirana was irrational. Once again, as it is submitted, the judge came to the contrary finding without having tested the appellant's evidence. There would appear to be errors of law which may affect the outcome as set out in grounds (i) and (ii).
39. Ground (iii) was that the judge erred in her assessment of whether there was sufficiency of protection in Albania and that she only relied on one specific report, that of the Swedish International Development Cooperation which referred to women and girls and not to male victims over 14 years. It was arguable that the judge ignored the remaining copious evidence. Although, I do note that the judge did make a finding that the appellant could work on return to Albania that was within the context of the support of the family in terms of accommodation and the approach to that latter evidence appears to have been flawed as analysed above.
40. I am not persuaded that there is any specific error in the approach of the judge to ground (iv), to the analysis of the best interests but as for ground (v) the analysis of any significant obstacles to integration on return would be affected by grounds (i) and (ii). I have, however, already found, the findings in relation to the appellant's credibility are axiomatic and because there is an error of law in relation to grounds (i) and (ii) and consequently (iii) the decision should be set aside for a fresh hearing. Should the appellant wish to give evidence that is now a matter for him but any concerns about his evidence should be raised at the hearing. As such, the matter should be returned to the First-tier Tribunal because of the nature and extent of the findings to be made not least on the appellant's oral evidence.

### **Notice of Decision**

The First-tier Tribunal made an error of law and his decision is set aside. We remake the decision and dismiss the appeal.

### **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 his 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 Helen Rimington

Date 2<sup>nd</sup> February 2018

Upper Tribunal Judge Rimington `