



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/00430/2016

THE IMMIGRATION ACTS

Heard at Field House
On 29 April 2019

Decision and reasons Promulgated
On 09 May 2019

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

**LC
(anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms G Melllow of Counsel

For the respondent: Ms K Pal, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Albania born on [~] 1998. The respondent refused the appellant's application to be recognised as a refugee and to be granted humanitarian protection in the United Kingdom. The appellant appealed against the respondent's decision and First-tier Tribunal Judge Mace dismissed the appellant's appeal in a decision dated 27 February 2019.

2. Permission to appeal was granted by first-tier Tribunal Judge Shimim in a decision dated 26 March 2019 stating that it is “arguable that there are this material errors of law in the decision”.
3. Thus, the appeal came before me.
4. The Judge in his decision made the following findings which I summarise. The basis of the appellant’s claim for protection is that he fears persecution from his family and society generally in Albania because he is a homosexual. The appellant was a minor when he entered the United Kingdom and when he was interviewed in August 2014 he was 16 years of age.
5. The appellant’s problems started three years before he entered the United Kingdom when his family found out he it is a homosexual and this was when he was 13 or 14 years old. He was seen holding hands and hugging his partner [MS] near the park. His father wanted to kill him and he beat him two or three times. His father would attack him randomly. His parents would ask why he was doing such things as he comes from a good family. The appellant however managed to continue to see [MS] and they would meet in different towns. Sometimes he would stay at a friend’s house telling his friend that his father was beating him.
6. The appellant decided he had to leave Albania. He managed to convinced his father that he had changed and convinced him to go on holiday to Italy to forget everything. From Italy he travelled to France by train, using they money given to him by his father.
7. The Judge found that the appellant’s account as to how his relationship with [MS] started is credible and taking into account his age when the events occurred even if there were some discrepancies, his account is plausible. The appellant has demonstrated that he is a homosexual.
8. The Judge then considered the appellant’s risk on return based on the fact that he is a homosexual. The Judge stated that there is a considerable amount of background material on homosexuals and Albania. He also considered the expert report from Dr Chencier who concluded in his report that the appellant’s account in relation to being a victim of domestic violence and his experiences in regard to his sexuality is plausible. In the expert’s opinion, homosexuals are at risk of oppression in Albania. The expert does not use the word “persecution” but “oppression” which does not imply a level that would engage the Convention.
9. The expert confirms in his opinion that the appellant would be at risk on return to Albania on account of his sexuality from his family and society generally and would

be stigmatised and abused by the authorities as he would not have their protection and will also be denied employment because the State is the main employer in Albania. The sole shelter in Albania is too small and it appears only to cater for attack victims.

10. Dr Chancier states that this intra-family feud and there is no resolution possible expect for punishment or exile for the appellant. The expert opinions that the family honour has been shamed. If the appellant return this would exacerbate the blood feud and the appellant will be at risk of a range of physical and psychological punishments. The expert also states that all jobs are gained through patronage and in Tirana everyone is nosy and asks where new arrivals come from.
11. Internal migrants must transfer their civil registration and there is a possibility that his father could bribe corrupt police officer when the appellant seeks to register himself. The expert summarised that if the appellant returned he would plausibly visit his mother and sister and his former partner in his home area and his whereabouts would rapidly become known the. Also, it is likely that the appellant has been lined up without his knowledge for an arranged marriage by his traditional parents and in addition to the shame of his open homosexuality, his expulsion from home has wrecked any traditional arranged marriage which his extended family will view as a serious shame on them.
12. The Judge disagreed with the conclusion of the expert that effective security and protection of LGBT events by the Albania authorities is not relevant to the assessment of risk for the appellant. The Judge stated that the authorities have provided security for public demonstrations or support for LGBT events which is indicative and supportive of their attitude and commitment to implement the antidiscrimination laws that have been brought into force and to provide an environment where people can express themselves publicly. The Judge also found that the expert's conclusion that the authorities would pose a risk of serious harm to the appellant were he to live alone or with someone of the same sex, particularly in one of the big cities.
13. The Judge accepted that while there remains a level of discrimination within society towards LGBT people in Albania, it is clear from the background material that the authorities have taken significant steps to tackle this. The Judge took into account the Human Rights Watch article from November 2017 recounting a visit to a LGBT shelter. The judge also considered the country policy and information note on Albania would states that the Albanian government has made significant efforts in the inclusion of protection of LGBT people although homophobic sentiment remains very high.

14. The Judge said that having accepted the appellant's sexuality and having considered the background material, found that the appellant would not be at risk on his return to Albania. He did not accept that the appellant is at risk from his father or that his father would have the means or influence to trace the appellant should he have to register in Tirana order to obtain services and employment this. The Judge noted that appellant has expressed no wish to return to his home area and there is no reason to believe that he would go anywhere near his home area when he returns to Albania. It is pure speculation that the appellant's father would be aware that the appellant has returned and then bribe a police officer and even less likely that his father would ask the University if he was there.
15. The Judge did not accept the expert's opinion that this was a matter of family honour akin to a blood feud whereby his father would feel obliged to exact some form of revenge on the appellant. The appellant remained in the family home for some considerable time after his family became aware of the sexuality and while he was treated badly by his father, it went no further. His father did not throw him out of the family home and seek to harm him physically in a more permanent way. It is also speculative to say that the appellant without his knowledge may have been lined up for an arranged marriage. The appellant was not compelled to leave the family but he left were his own accord.
16. The Judge stated even considering the report of the expert, it contains a large number of references which are balanced and include reports of progress in relation to the LGBT community in Albania. However the expert comes to a number of conclusions which are speculative and not based on the evidence. The appellant has expressed no wish to return home and there is no need for him to do so. The appellant could reasonably be expected to relocate to another part of the country such as Tirana.
17. The Judge considered the country guidance case of **IM (risk - objective evidence - homosexuals) Albania CG [2003] UKIAT 00067** in which it was concluded that there is no country background evidence would support a reasonable likelihood that homosexuals in Albania are subject to any action on the part of the populace or the authorities which would amount to persecution or it would be in breach of their protected human rights. The Judge acknowledged that the case was decided some time ago, but stated it is equally evident that the pressure for change in Albania for LGBT people has increased over recent years. There are regular high-profile public LGBT events which are publicised and supported by the authorities. The authorities have passed legislation and adopted an action plan for 2016-2020 to improve inclusion.
18. The background material and case law demonstrates that the appellant would not be able to live openly as a homosexual man, then I consider whether the appellant

would do so and why. The evidence demonstrates that the appellant is a reserved and quiet individual who does not like to discuss his sexuality readily even with his foster family or social workers, individuals whom he trusts and feels comfortable with. [MS]'s evidence was that it is only on very few occasions that the subject comes up. The Judge stated that he was not sure whether the appellant would be able to openly express himself as he knows how the people around him would react, such is the culture.

19. The Judge did not accept that he has been held back in the 4 ½ years he lived in this country by fear as suggested. The Judge found that the appellant would live his life in Albania discreetly not because of the fear but of the consequences of doing otherwise. Even if the appellant were to live openly as a gay man in Albania, while it is accepted that he may face some hostility and discrimination, there are support and advocacy networks available in the form of NGOs and LGBT groups. It is not accepted that the level of treatment the appellant would encounter particularly in the large cities such as Tirana, would reasonably likely amount to persecution which would be in breach of his protected rights.
20. The Judge dismissed the appellant's appeal with reference to paragraph 276 ADE. and Article 8 of the European Convention on Human Rights.
21. At the hearing, I heard submissions from both parties as to whether there is an error of law in the decision of the First-tier Tribunal such that I should set it aside and remit the appeal to the first-tier Tribunal to be reheard.
22. The grounds of appeal state the following which I summarise. The Judge having accepted the appellant's account and accepting past harm, failed to properly apply rule 399K prior to conducting an analysis of future harm.
23. The Judge failed to make any findings on risk of return to the appellant's home area. The Judge does not address at all the risk to the appellant from his father/community if returned to his home area in northern Albania or whether the appellant's father would be motivated to persecute him on return to his home area.
24. The Judge exclusively concentrates throughout the decision to risk to the appellant from his father if he moved to a different area in Albania. The question posed at paragraph 34 and 35 of the decision is asking the wrong question and adopts the wrong analysis. The question is not whether the appellant would in fact return to his home area but whether he would be persecuted there if he did. It is only once that question is answered the question of internal relocation becomes relevant.

25. The Judge gave no consideration at all to the sufficiency of protection in the appellant's home area. The Judge on his own findings acknowledges that it is likely to be difficult to obtain State protection in his home area when it comes to family matters particularly in the north of the country where the appellant comes from. The Judge's failure to consider it or even address the question is material.
26. The Judge fails to lawfully consider the question of reasonableness or undue harshness of internal relocation for the appellant. The Judge does not take into account her own finding that she has made as to the discrimination, hostility and very high homophobia in Albania. Even if this does not meet the threshold persecution this conduct is nonetheless relevant to the question of reasonableness of relocation for the appellant. There is also no engagement with the appellant's ability to access accommodation employment and support in light of this age, lack of family support, the extent of support he needs in order to function and his emotional well-being, evidence of lack of shelters for the appellant, his sexuality and the risk of harm and discrimination against these attacks, his subjective fear of return as a gay man and the difficulties in integrating in to the community as a gay man.
27. The Judge failed to consider the expert report properly or at all for the question of internal relocation for the appellant. The Judge failed to specify what NGOs and LGBT support groups could support the appellant on his return. The Judge's conclusion that the appellant can relocate, flies in the face of the expert report and no reasons, adequate or otherwise are given from not relying on it.
28. The Judge failed to properly consider **HJ Iran** test and failed to provide adequate reasons for concluding that the appellant would live discreetly in Albania because he wished to do so and not out of fear. The Judge failed to lawfully or adequately consider the reasons why the appellant would behave discreetly on return. The appellant's evidence was clear that he would be compelled to modify his behaviour on return because of fear of persecution.
29. The last ground of appeal is that the crux of the appellant's claim related to the risk arising from his father on return which was not considered by the Judge and the risks to the appellant on account of his current sexuality and likewise the analysis of sufficiency of protection is flawed. The Judge fails to engage with the country guidance evidence and the expert report in considering whether the appellant would be at risk of persecution on return and failed to ask himself whether the appellant could be expected to access State protection.
30. The Judge has failed to properly consider or determine the questions identified by Upper Tribunal Judge Davidge at paragraph 12 of his decision remitting this case, namely whether there is a risk to the appellant on return to the appellant's home area

and whether there is sufficiency of protection in his home area and the reasonableness of this appellant's relocation in all the circumstances of his case.

31. At the hearing I heard submissions from both parties as to whether there is an error of law in the decision such that I should set it aside and remitted to the first-tier Tribunal to be reheard.

Discussion and Decision as to whether there is an error of law.

32. I have given anxious scrutiny to the decision of the First-tier Tribunal and have taken into account the grounds of appeal and the submissions made at the hearing. The gist of the grounds of appeal is that the Judge did not take into account the expert's opinion that the appellant could not safely return to his home area in Albania as a homosexual and it would be unduly harsh for him to relocate to Tirana.
33. The grounds of appeal are no more than a quarrel with the findings of the Judge who in a very careful decision took into account all the evidence including the expert report, the background evidence of the country guidance case in finding that the appellant can return to Albania and relocate to Tirana and that background evidence and the country guidance case states that homosexuals are not persecuted within the Convention definition of persecution in Albania.
34. The grounds of appeal argue that the Judge did not consider whether the appellant would be at risk from his father on his return to his home area. Miss Melllow argued that the Judge must take a step-by-step approach and only after he has determined that the appellant cannot return to his home area should he look at the question of relocation.
35. I do not accept this argument because it is implicit in the decision, that the Judge took into account the appellant's own evidence that he has no intention of going back to his home area if he has to return to Albania. The Judge stated that the appellant was not going to return to his home area and found that there was an area of the country to which the appellant could go where he would not be at risk of harm and that was sufficient. Even if the Judge did not explicitly find one where another whether the appellant would be at risk in his home area, this would not be a material error because the Judge found that the appellant can relocate to Tirana and it would not be unduly harsh for him to do so. The Judge found that the expert speculated that the appellant who misses his mother and ex-partner would go to his home area but this was against the appellant's own evidence that he would not go home and the Judge found that there would be no need for him to do so and therefore a sustainable finding. Therefore this ground of appeal has no merit because the Judge

acknowledged that the appellant would not return to his home area and whether there was a risk to him or not in his home area was a moot point.

36. The Judge accepted the appellant's evidence that he is a homosexual and believed his account of his relationship with [MS] when he was a teenager. However the Judge considered the background evidence which states that the Albanian authorities have made huge strides forward in trying to improve inclusion of LGBT people in the community. The Judge relied on the country guidance case of IM which stated that there is no evidence which supports a reasonable likelihood that homosexuals as such in Albania are subject to any action on the part of the populace or from the authorities which would amount to persecution or would be in breach of their protected human rights. The Judge found even though the case was decided on 2003 and the background evidence suggests that the situation has changed for the better in Albania for LGBT persons and that there is no reason or evidence before him for why she should depart from the country guidance case.
37. There is no merit in the argument that the Judge did not consider the expert report fully. The Judge extensively referred to the expert report in his decision and came to sustainable findings and conclusions about the report. The Judge noted that although the expert report states that the appellant would return to his home area to visit his mother, sister and his former partner because he misses them, is not supported by the appellant's own evidence at the hearing that he has no wish to return to his home area. Therefore the expert's report that he would go to his home area is not supported by the appellants' evidence that he will not return there. The Judge found that the expert speculated on what the appellant would do, including the expert's speculation that an arranged marriage might have been set up for the appellant. The Judge was entitled to place limited weight on the expert's speculations. The Judge noted that even the expert set out evidence that the Albanian authorities are improving their treatment of LGBT people.
38. The Judge also found that although the appellant says he misses his mother and former partner, he has made no attempts to contact them and thereby concluded that the appellant would not go anywhere near his home area or indeed would have no need to do so. These are perfectly sustainable findings on the evidence before the Judge.
39. The Judge found that the appellant is a young educated man who has gained experience of employment and his commendable voluntary work and his more recent employment. The Judge found that the appellant's father would not be motivated to seek him out or try and bribe a police officer if he attempts to register elsewhere. The Judge did not accept the expert's opinion that this is intra family situation is akin to a blood feud. The Judge also found that this was a speculation by

the expert that this would be considered a matter of family honour all that the appellant's father would seek to exact revenge on the appellant given that his father did not throw him out of the house when he first discovered that the appellant is a homosexual and it was not the appellant who left the family home of his own accord.

40. The Judge said that the appellant would not live openly in Albania and it would not be out of fear but that he would behave discreetly as he has done in the past because of the culture. The Judge found even in this country the appellant did not raise matter of his sexuality with others and that is how he would behave on his return to Albania which would not be out of fear but from his cultural background. The grounds of appeal state that this is speculation on behalf of the Judge that the appellant would be discrete but not out of fear. However the Judge went on to say that even if the appellant does live openly as a gay man in Tirana, it would not be reasonably likely that any level of treatment given to him would not amount to persecution or breach his protected rights. This was a conclusion open to the Judge to make on all the evidence before him which he carefully analysed.
41. The Judge also considered that there was sufficiency of protection for the appellant in Tirana in Albania even if there was no sufficiency of protection in his home area. However the Judge stated that the appellant had said in his evidence that he had no intention of returning to his home area and therefore whether or not there is protection for him in his home area does not arise because that is not where he will go. The appellant is no longer a child which he was when he was last in Albania. He is now an adult, and will be able to avail himself of the protection of the authorities in Tirana to where he can relocate.
42. I find that the Judge was entitled and required to reach his conclusions based on the evidence in determining the appellant's appeal. The Judge has taken into account all the evidence including the background and the expert evidence. I find there is nothing unreasonable or perverse in the conclusions reached by the Judge. I find on the evidence in this appeal, no differently constituted Tribunal would reach a different conclusion.
43. I find that there is no material error of law in respect of the Judge's findings that the appellant cannot be recognised as a refugee or be granted humanitarian protection in the United Kingdom. I find the First-tier Tribunal's decision stands and his appeal cannot succeed as there is no material error of law in the decision.

DECISION

The appellant's appeal is dismissed

Anonymity direction is not made

I have dismissed the appeal and there can be no fee award

Dated this 7th day of May 2019

Signed by

A Deputy Judge of the Upper Tribunal

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Mrs S Chana