Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: PA/07978/2016
PA/08470/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 21 December 2018	**On 30 January 2019**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

D P (FIRST APPELLANT)
V P (SECOND APPELLANT)
(ANONYMITY DIRECTION MADE)

Respondents

Representation:
For the Appellant: Mr S Whitwell, Home Office Presenting Officer
For the Respondents: Ms S Akinbolu, instructed by CK Solicitors

DECISION AND REASONS

1. This is the Secretary of State's appeal against a decision of the Judge of the First-tier Tribunal who allowed the appeal of the appellants on protection grounds and on human rights grounds. For convenience I will refer to the parties as they were referred to in the First-tier Tribunal.

2. The claim is essentially made on the basis of fear from the actions of people who had lent money to the father of the first appellant and the

husband of the second appellant, they being daughter and mother, and threats that had been made to them and problems that had been experienced which caused them to flee from Albania, in the case of the first appellant via Greece and France to the United Kingdom and in the case of the second appellant with her younger child, her son, having travelled from Greece to Spain to the Republic of Ireland and then to the United Kingdom having left Albania in 2011.

3. The refusal decision in the case of the first appellant accepted that her father owed money in Albania and had experienced problems with his creditors. What was not accepted was that her other sister had been abducted in Greece by the creditors.

4. The decision maker considered risk on return as a female returnee and noted the country guidance in the context particularly of trafficked women and domestic violence, which of course in some ways raised slightly different issues as this is a rather unusual claim where the risk is not what might be seen as more typical categories, but the specific risk of the kind I have described.

5. Consideration was given to sufficiency of protection and the background evidence was considered, the CIG of August 2015 and the general view of the Secretary of State that there is a sufficiency of protection in Albania and internal relocation is feasible, though of course it is accepted that it would have to be considered on an individual basis. There was a consideration of Article 8 issues and the conclusion was that there was no satisfaction of the requirements of the Immigration Rules and nor were there such exceptional circumstances as to justify a grant of leave outside the Rules, and then the separate decision in relation to the second appellant.

6. The claim was regarded as lacking in credibility. There were references to the history as set out and the amounts of money being borrowed, and the people from whom it was borrowed. There was an issue taken as to the timing of when the problems began which was addressed subsequently in the first appellant's witness statement, and the claim in general was regarded as lacking in credibility on the basis that it was considered that she had remained in Albania for ten years without any action before she left for Greece, and again, in the submissions the protection and internal relocation issues were addressed on essentially the same basis as in relation to her daughter and the human rights issues likewise.

7. The judge set out the history of the claim and the evidence. The judge heard evidence from all three witnesses, the two children and the mother. He then considered the background evidence. The Secretary of State relied on both the refusal letters. Insufficiency of protection had not been established and the threats had not been reported to the police. They did not take the opportunity to see whether they would receive protection. The expert report said the first appellant could not relocate alone.

However, the Secretary of State argued that the expert had not considered the situation if she returned with the other family members and contact had been maintained with relatives in Albania. The money lenders were non-state agents and would not be able to reach them in another part of the country.

8. On the appellants' side it was argued that the only inconsistency in relation to the second appellant's evidence was whether the problems began in 2001 or 2010 and she had clarified in her witness statement that the borrowing began in 2001 and the problems began in 2010, and hence there was no inconsistency. There was evidence of integration between organised crime and the Albanian police forces. Relocation was not an option because of the high reliance in Albania on family networks and the problems they would face of the registration system and their whereabouts being traceable.

9. Then I come to the judge's findings and decision, and he found at paragraph 61 that the family had encountered problems arising from the debts owed by the father in Albania which was essentially common ground. He found the money lenders were owed a considerable amount of money and were likely to use threats against the children to secure repayment of the debts and the children would be at risk of violence or kidnapping and therefore the first appellant and the second appellant's son were at risk. The second appellant not at risk in the same way, but was in fear of her children being harmed.

10. He found that levels of corruption within the Albanian justice system remained high despite efforts to address it and that the kind of person who was able to lend money in the sums lent in this case and to make credible threats was likely to be the type of person with connections with corrupt police and other officials. There was therefore a realistic risk of harm if returned. He accepted that there was no Refugee Convention reason in this case but found there were substantial grounds for believing that there was a real risk of suffering and serious harm if returned to Albania.

11. He then went on to consider in no great detail sufficiency of protection. He set out the Horvath requirement of a system of domestic protection, machinery for the detection and prosecution/ punishment of the money lenders and an ability and readiness to operate the machinery. The objective evidence he found showed that although steps were being taken in Albania to improve its judicial systems there were still significant amounts of corruption and Albania did not meet the Horvath test.

12. As regards internal relocation, he accepted the evidence that Albanian society was family based, and it would be very difficult to return and make a new life in another part of the country without connections to existing family members being known, and that those with access to information, whether legitimately or not, would be able to find the family via the local registration system for provision for housing and schooling and other

services. He also found the sums of money were such as to mean that the money lenders would take steps to recover their money.

13. He then went on to consider Article 8 issues and found that there would be no interference with family life, but the removal of the first appellant would constitute interference with her private life. She was established in her studies in the United Kingdom. It would be difficult for her to continue these in Albania given the issues in the country information about the situation of single women in Albania and he found that the interference was disproportionate, taking account of the respondent's requirement to exercise immigration controls. He noted that she had established her private life while her immigration status was precarious. He considered it to be relevant that the decision on the claim took so long as she would inevitably establish a private life while in the United Kingdom. He found no disproportionate interference with the second appellant's private life, but with regard to her son he found that he had developed a private life, and that it was in his best interests to remain in the United Kingdom with his sister, and in his best interests for his mother to remain with him and therefore allowed the appeal under Article 8.

14. The Secretary of State challenged the decision first on the basis that there was a lack of adequate reasons for the credibility findings and that the account was in the face of societal and cultural norms. The first appellant claimed on the one hand to know nothing about the debts run up but now claimed she was responsible for repaying a debt of over a quarter of a million euros and this was said, to say the least, to be unlikely. The judge had failed to consider the likelihood of such a debt arising or the current whereabouts of the husband, and the claim should have been found to lack credibility.

15. As regards internal relocation, the grounds are in a sense something of a combination of issues in relation to that and sufficiency of protection. It is said that the appellants are not attempting to seek protection from the authorities. Their own evidence suggested that the police did take action against perpetrators but they said that no threats had been made to the family in Albania and it was therefore deemed safe for them to relocate to where the extended family lived and contact had been maintained. It was said that it was likely that the money lenders if they had such influence would seek out the extended family in order to retrieve their money or locate the appellants and there was no such evidence in this case.

16. As regards Article 8 the appellants could not meet the requirements of the Immigration Rules. Private life had been considered but incorrect weight had been given. The rights of the child amounted to a primary consideration but not the only consideration and academic success could not be regarded as a trump card and there was no proper application of section 117B of the 2002 Act and there was a failure to consider section 8 of the 2004 Act when considering the entry into the United Kingdom on the basis of false documentation.

17. Permission was granted and there was a preliminary issue as to the ambit of the grant. The judge granted permission to appeal generally, but said nothing about the Article 8 issue in the reasons for decision. This is unsatisfactory in that something needed to be said either way about Article 8. The decision is simply silent on the point, but it does seem to me in light of the recent guidance of the President in Safi [2018] UKUT 388 (IAC) that where permission to appeal has been said to be granted generally, that absent exceptional circumstances, a failure to refer to a particular matter in the reasons for decision is unlikely to mean that permission could be taken not to have been granted in relation to that point, so I conclude that permission is to be taken to have been granted in relation to Article 8.

18. In the Rule 24 response Ms Akinbolu argued first that it is unclear what is meant by in the face of societal and cultural norms. The judge had accepted the evidence given, there was no contradictory evidence, the account had been consistent overall. There was no reference to any background material in relation to this issue of societal and cultural norms. As regards internal relocation, it was said that this appeared to be an attempt to reargue the existence of sufficiency of protection as opposed to the availability of internal relocation. The judge had made it clear that all those steps were being taken and protective mechanisms in Albania were subject to corruption and were inefficient and this was consistent with the country guidance. The judge had given clear reasons for finding that the appellants could not relocate. There was another issue about relocation which had now gone away as Mr Whitwell on behalf of the Secretary of State no longer relied on that.

19. As regards Article 8 it was said that the ground is misconceived and generalised. The judge had taken into account the unlawful delay in deciding the claim. Clear reasons had been given for the establishment of private life and the decision was legally sustainable and rational.

20. Those are the essential arguments made. I will say a little also about the submissions which have been made which in each case build on the points made on the one hand in the grounds of appeal and on the other hand on the Rule 24 response.

21. With regard to Article 8, Mr Whitwell argued that the judge had failed to refer to section 117B(4)(a) and (5), in particular the precariousness point, and it was clear from Patel that there is no breach of protected rights by itself in an inability for a person to continue studies. In the decision, it was argued, it was unreasoned, and in light of the second appellant there was no interference with family or private life so her claim could be said to fall at the initial hurdle. If there was no interference with private or family life then there was nothing to attach the best interests assessment to, so it was argued that there was an error of law in that respect.

22. As regards ground 1 it was argued, as I say, that there was a lack of reasons for the credibility finding. With regard to the cultural norms point, the point made was that the first appellant had argued that being a single woman in Albania was a factor making relocation difficult and there are points made in the CIPIN about the essentially male-centric culture in Albania and the difficulty and the discriminatory nature of life in Albania, so there was information in the public domain to support this cultural norms point.

23. Otherwise it was argued that the judge had insufficiently considered the background evidence in coming to his conclusions on sufficiency of protection and internal relocation. There was an absence of ongoing threats to the extended family which, as I say, was a factor that had been referred to in the grounds. Sufficiency of protection had been found in the country guidance in the case of trafficked women and the decision in general was inadequately reasoned and therefore it was required to be set aside.

24. Ms Akinbolu argued first in relation to the protection claim that there was a discrepancy in the findings in the refusal letter as to what was accepted or not accepted in the claim with regard to the first appellant accepting the existence of the debt and problems as a consequence of that. The issue of cultural norms still remained unclear. It was clear that Albania is a patriarchal society, but no evidence had been produced to show that money lenders would not attack or threaten female family members.

25. The judge had accepted the credibility of the claim and although the reasoning was not in great detail, nevertheless the relevant issues had all been properly addressed, including sufficiency of protection and internal relocation, and the findings on Article 8 were adequate.

26. By way of reply Mr Whitwell argued that although the existence of corruption in Albania is accepted, the guidance considers that there is a genuine sufficiency of protection and internal relocation and the judge's findings were, as a consequence, inadequate.

27. I will consider first of all the protection issue. I have set out the arguments that have been made and what was said by the judge and perhaps I do not need to say a very great deal about this. The first point is the contention that the credibility findings lack reasoning. The judge had set out what the issues were. He accepted, as I think is common ground, that problems had been encountered arising from the debts owed by the father in Albania. He was, I consider, properly entitled to find that the money lenders were owed a considerable amount of money and were likely to use threats against the children to secure repayments of the debts. There was, I think, no good reason for him not to accept that threats had been made, and that the problems that were said to have existed occurred and that there was a risk as a consequence, in particular with regard to the children. It was open to him also to find that a person who could lend

money in these amounts and to make credible threats was likely to be somebody with connections to corrupt police and other officials, so he found, as I say, that there was a realistic fear of harm on return and I think that finding was open to him.

28. It is, I think, common ground that not a lot was said by the judge on sufficiency of protection, but it is clear from the respondent's guidance and I think from the country guidance also that each case must be assessed on the basis of its own facts, and of course the country guidance has tended to be related to other issues such as risk on return to previously trafficked people, risk in relation to blood feuds and so on. This is a more particular matter and the judge addressed the Horvath test. Clearly, as he had set it out in some detail he had before him the arguments that had been made on sufficiency of protection, he had the decision letter of course as well, and he found that steps were being taken in Albania to improve the judicial system, but that there were still significant areas of corruption, and he found that Albania did not meet the Horvath test. I think that must be taken to have been applicable to the particular facts of the case and the kind of people making the threats in this case being the type of people who have had connections with corrupt police and other officials. So, although terse, I think what he said about sufficiency of protection was open to him.

29. Likewise with regard to internal relocation. Again, what he said is brief, but it is to the point. He accepted the evidence that Albanian society is family-based and I do not think that is controversial. He found it would be very difficult to return and make a new life in another part of the country without the connections to existing family members being known and the registration system which makes people in this position vulnerable to persons who may well, legitimately or not, have access to the registration system which would enable them to be located. Well, it might be said, this is a very old debt. Is there really an ongoing interest, it might be asked, and the judge's response to that was that the sums of money involved were sufficient to mean that the money lenders would take steps to recover their money, so although the problem was an old one, it was not a problem that had gone away. In my view that conclusion was properly open to him.

30. In the end therefore it seems to me that the judge's conclusions are ones that were open to him and that there has not been shown to be a failure to address material issues in respect to credibility, sufficiency of protection or internal relocation such as to materially flaw the decision, so as a consequence I conclude that the findings of the judge in regard to international protection are sound and have not been shown to be flawed as a matter of law, and therefore his decision with regard to international protection is maintained.

31. I think perhaps in the light of that I do not need to say much at all about the human rights issues. I think there are some problems with the human

rights conclusions but in my view those really fall away in light of my findings on international protection, so the outcome therefore is that the appeal of the Secretary of State is dismissed and the judge's decision is upheld.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 17 January 2019

Upper Tribunal Judge Allen