



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

Appeal Number: PA/12399/2018

**THE IMMIGRATION ACTS**

**Heard at North Shields  
On 14<sup>th</sup> June 2019**

**Decision & Reasons Promulgated  
On 27 June 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ZUCKER**

**Between**

**BB (ALBANIA)  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Cleghorn, Counsel instructed by Halliday Reeves Law Firm

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Albania whose date of birth is recorded as 25<sup>th</sup> September 1994. She made application for international protection on the basis of her being a victim of domestic violence in her home country.

**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 her or any member of her 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.

2. The factual matrix in this case is not in dispute. She was in an abusive relationship. She did not marry the man chosen for her by her father but rather became pregnant consequent upon her relationship with another man.
3. Her application for international protection was refused and she appealed. Her appeal was heard by Judge of the First-tier Tribunal Cope. He dismissed the appeal. Not content with that decision, by Notice dated 5<sup>th</sup> March 2019 the Appellant made application for permission to appeal to the Upper Tribunal and on 26<sup>th</sup> March 2019 Judge Loke granted it.
4. The grounds in short submitted that the judge placed too much weight on the case of **DM (sufficiency of protection - PSG - women - domestic violence) Albania CG [2004] UKIAT 00059**, that case being some fifteen years old, and more particularly by giving weight to a country report which had not been included in the bundles of either party in circumstances in which in particular the Appellant's representative had not been able to make submissions.
5. It was not necessary for me to determine whether or not there had been an error of law in this matter because the parties were in agreement that there had on the basis of the inherent unfairness which the Appellant faced in not being able to make submissions when so much of that report was relied upon by Judge Cope.
6. At the commencement of the proceedings before me once the error of law had been acknowledged, Ms Cleghorn sought to persuade me that this case now in the Upper Tribunal should be resolved by determining whether or not the Appellant was entitled to humanitarian protection, notwithstanding the fact that that was not a point raised in the grounds which she drafted.
7. The first ground of appeal makes reference to **DM** leads the reader to the view that what was complained about was whether or not there was a "convention reason". However, that was completely irrelevant because there had already been a concession by the Secretary of State on that point in the reasons for refusal letter.
8. I am very grateful to Mr McVeety in this case for accepting that in the remaking of the decision the sole issue was whether or not it would be unduly harsh for this Appellant internally to relocate within Albania. For the avoidance of doubt the concession as to whether or not there was a Convention reason was not in respect of all women from Albania but women who had been victims, such as this appellant, of domestic violence.

9. By Article 8 of the Qualification for International Protection (Directive 2011/95/EU):-

- (1) As part of the assessment of the application for internal protection member states may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country.
- (2) In examining whether a part of the country of origin is in accordance with paragraph 1, member states shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.
- (3) Paragraph (1) may apply notwithstanding technical obstacles to return to the country of origin.

10. The leading case of **Januzi [2006] UKHL 5, para 21** is helpful. Lord Bingham said: -

*“The decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so ... The decision-maker must do his best to decide, on such material as is available, where on the spectrum the particular case falls ... All must depend on a fair assessment of the relevant facts”.*

11. In **AH (Sudan) [2007] UKHL 49** at paragraph 20 Baroness Hale cited with approval the UNHCR view that the test was whether the individual would be able to live a “relatively normal life without undue hardship”, itself a formulation approved in **Januzi**.

12. Although complaint is made about the reference of Judge Cope to the particular report, neither party before me in this appeal in the Upper Tribunal referred to it or sought to rely on it. Mr McVeety relied on certain parts of the refusal letter, but more particularly on the UK Home Office Country Policy and Information Note Albania: Women fearing domestic abuse (December 2017) 3/01/2018. At 2.5.3 it is of note that in 2015: -

*“The People’s Advocate of Albania stated that women, particularly those who may be vulnerable, such as divorced women and single mothers ... faced inequality in the workplace, and barriers in receiving the social and economic benefits to which they are entitled”*

However, by reference to paragraph 2.5.4 Mr McVeety pointed out that these women are entitled to receive state benefits and where a person has had their case reviewed by a court and a restraining order has been issued, then a victim of domestic abuse would be entitled to an additional sum.

13. Mr McVeety then took me to paragraph 9.4.5. Under the heading of “State benefits” after making reference to 9.4 which deals with the issue of employment in Albania in which at 9.4.3 it reads: -

*“The People’s Advocate of Albania (which states that it defends the rights, freedoms and lawful interests of individuals from unlawful and incorrect acts or omissions of public administration bodies as well as third parties acting on its behalf. It has as its mission the prevention of potential conflicts between public administration and the individual) published a report in 2015 which stated ‘Women, particularly divorced women and single mothers ... face problems with their access to justice, inequality in the labor relations, and barriers in receiving the social and economic benefits to which they are entitled’”.*
14. Finally, with respect to that report Mr McVeety referred to paragraph 9.8 which, under the heading of “Children of Single Mothers” noted that such children are given priority in school registration and lessons though that is not particularly relevant on the facts of this case since the Appellant’s child is not yet 2 years of age.
15. I observe that Judge Cope found that it was not reasonable, indeed not possible, to expect this Appellant to return to her home area. By consent that is a preserved finding.
16. It was common ground, that the area from which the Appellant hailed in Albania was a “conservative” area in the north.
17. There are two country guidance cases to which I was referred: the first is **TD and AD (Trafficked women) CG [2016] UKUT 00092** and the other was the earlier case of **AM and BM (Trafficked women) Albania CG [2010] UKUT 80**. In respect of the case of **AM and BM** I was referred to a number of paragraphs but particularly paragraphs: 154; 158; 171 and 186.
18. I remind myself that the cases are concerned largely with trafficking. In this appeal it is not suggested that the Appellant was trafficked. The concern is that she may be found, or in any event would have to live under the worry and concern of being found, thereby being at risk of serious harm and having also to live with the fear of harm coming to her child in circumstances in which she would be significantly disadvantaged by the societal norms in Albania towards unmarried women with child.
19. Although the Appellant is university educated, the evidence taken from the interview which was not challenged was that she came from a relatively modest background.
20. The country guidance suggests that a young woman with a child would find it significantly more difficult to achieve reintegration into Albanian society than would be the case in many other countries. Each case turns on its own facts.

21. What I have to have regard to is the social status and economic standing of the Appellant's family; the level of education of the Appellant and her family; her state of health, particularly mental health in respect of which I am told, and it did not appear to be in dispute, that she suffers from post-traumatic stress disorder; the presence of an illegitimate child; the area of origin of the Appellant's family and her age.
22. Apart from the level of education of the Appellant herself which is at university level, those factors all weigh in the Appellant's favour insofar as she seeks to succeed in this appeal.
23. The country guidance cases also, contrary to the submission made on behalf of the Secretary of State, do suggest that there is a real risk that where someone relocates still they may be found, and even if it is the case that there is no sufficient evidence that the Appellant's family are actively pursuing her, there is the real risk (supported by the country guidance) that she would be seen and her presence in the country would come to the attention of her family who, as I have already observed, are from a conservative area and take the view that her conduct has dishonoured them with the risk that she might then be pursued.
24. So it is that she would, I find, be living in fear of harm not only to herself but also to her child in circumstances in which she would be disadvantaged in obtaining work, not least because she has a young child to look after and no family network to look to for support, which is an important component of survival in Albania. The issue of a support network appears to be of particular significance and was a matter which concerned the Upper Tribunal, particularly in the case of **TD and AD**.
25. As the Courts have observed, resolving the issue as to whether or not it would be unduly harsh is not an easy task. Ultimately it is a finding of fact, but having regard to the submissions, the country guidance cases and the background material to which I have been referred, and noting the very tender years of the baby, noting that the Appellant would return with little if any support, I find that it would, even having regard to the norms of Albania, be unduly harsh to expect this Appellant internally to relocate.
26. As that was the sole issue in this case, it follows that the Appellant is to be recognised as a refugee. The question of humanitarian protection does not arise in this case and necessarily the Appellant succeeds under Articles 3 and 8 of the ECHR.

### **Notice of Decision**

The decision of Judge Cope is set aside having contained a material error of law. The decision of the First-tier Tribunal is remade such that the Appellant succeeds on refugee and human rights grounds.

Signed

Date: 25 June 2019

A handwritten signature in black ink, appearing to be 'AJZ' followed by a long horizontal flourish.

Deputy Upper Tribunal Judge Zucker