Upper Tribunal

(Immigration and Asylum Chamber) **Appeal numbers: PA/05058/2019 (P)**

PA/05200/2019 (P)

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC	**Decision & Reasons Promulgated**
On 27 July 2020	**On 5 August 2020**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

BR and KR

(ANONYMITY ORDER MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (P)

For the appellant: Mr I Khan, instructed by Eric Smith Law Limited

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

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents that I was referred to are in the bundles submitted to the Tribunal, the contents of which I have noted and taken full account of. The order made is described at the end of these reasons.

1. The two appellants, citizens of Albania and cousins, have appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 12.2.20, dismissing their linked appeals against the respondent's decisions of 16.5.19 to refuse their claims for international protection.

2. At the date of the respondent's decisions, BR was 17 years of age and KR was 15 years of age. They are now 18 and 16 years of age, respectively.

3. The appellants did not attend the hearing but Ms L Johnson from Oxford Social Services attended as an appropriate adult. I also understand that the appellant's solicitor's representative Mr H Khuram was listening in to the hearing.

4. The essence of the appellants' claim is that they were together the victims of repeated attempts by two unknown men to abduct them, telling them that they could make "easy money" to support their families. They claim to have been told that nothing would happen if their parents made a complaint to the police, as the men knew the police, and their families would suffer the consequences. They originally claimed that 'Uncle Ramadan' helped them flee Albania in December 2016 and they claim to have entered the UK clandestinely in January 2017. It was also claimed that the appellants were of adverse interest to the Albanian authorities. Although their grounds of appeal had claimed they were estranged from their families and their families could not be contacted, at the appeal hearing they admitted that they had been taken out of Albania by their respective fathers and that they remained in regular contact with their families in Albania.

5. As they had not been the victim of trafficking, and as case authority has held that women in Albanian, even at risk of domestic abuse, do not form a Particular Social Group (PSG), the respondent did not accept that their claim fell within those categories protected by the Refugee Convention. Their account of events in Albania was rejected and there was no credible evidence that the non-state agents they claimed to fear had any influence with the authorities. It followed that they did not qualify for humanitarian protection. In any event, it was asserted that there was a sufficiency of protection for them in Albania. The private life claim was assessed and found not to meet the requirements of the Rules. Whilst they had extended family members in the UK, none of those

persons had any lawful leave in their own right so that any familial relationship between them could continue in Albania. The respondent considered that there were no exceptional circumstances to warrant a grant of leave outside the Rules.

6. The First-tier Tribunal Judge entirely rejected their factual claim as not credible and, in the alternative, found that there would be a sufficiency of protection on return to Albania.

7. There has been no Rule 24 response to the grounds of application for permission to appeal.

8. Permission was granted by the First-tier Tribunal on the basis that it was arguable that "the judge has failed to make a decision in respect of one of the grounds of appeal namely that the respondent's decision was unlawful under the Human Rights Act 1998 and that this amounts to a material error of law." Whilst the other grounds were considered to have less merit, permission was nevertheless granted on all grounds.

9. I am grateful to both representatives for their helpful submissions and responses to my queries during the hearing. I confirm that I have taken these fully into account before reaching my decision. At the conclusion of the hearing I informed the parties that I did not find an material error of law in the decision of the First-tier Tribunal and whilst I briefly summarised my reasons orally, I made it clear I reserved the full reasons to be given in writing, which I set out below.

10. The grounds of application for permission to appeal first argue that the First-tier Tribunal erred in failing to consider TD and AD (Trafficked women) CG [2016] UKUT 00092 (IAC). Complaint is also made of the judge's treatment of the expert report. Mr Khan elaborated upon these grounds during his oral submissions, arguing that the judge had failed to apply the Country Guidance to look at the individual circumstances and any support network that may be available to the appellants on return.

11. In relation to the case law in relation to trafficked women, it is clear that the appellants' factual claim was entirely rejected. They were not trafficked women and found not be at any such risk of trafficking. It follows that the case law is irrelevant, as Mr McVeety submitted.

12. In relation to the expert report, Mr Khan submitted that the judge failed to properly reason its rejection as not objectively supported. However, on the factual findings of the First-tier Tribunal rejecting the claim of attempted abduction, the expert evidence could be of little assistance to the appellants. Nevertheless, the judge devoted a lengthy paragraph at [5] of the decision to

consideration of the expert report and giving reasons for according limited weight to it, including that some of the 'evidence' being relied on was personal anecdote from the expert's family members or others. Nevertheless, it is clear that the findings were made after giving careful consideration to the opinion of the expert in the report; the judge noting the acceptance of the expert that it was for the court to decide whether the accounts given by the appellants are true.

13. Whilst the judge found the evidence of the appellants inconsistent, Mr Khan argued that changing the account to admit that it was not an uncle who helped them leave Albania was not an inconsistency. However, not only did they lie about having family support to leave Albania but they also lied when claiming to have no contact with or be estranged from their families. That is a sufficient discrepancy to undermine the credibility of the rest of their account and make it open to the judge to reject their factual claim.

14. In addition, it is complained that at [12] of the decision the judge misdirected herself and applied the wrong standard of proof when stating, "On the balance of the evidence I believe that if the Appellants required protection then the state would provide protection." It is not clear from this whether the judge was in fact applying a higher threshold or whether it was careless drafting, as Mr McVeety suggested. The possibility that the judge may have applied a balance of probabilities when finding a sufficiency of protection does not assist the appellants, as the higher standard includes the lower. There is, therefore, no prejudice to the appellants. In any event, the findings of the First-tier Tribunal as to sufficiency of protection are in the alternative and not determinative of the appeal and, therefore, not material to the outcome of the appeal.

15. In respect of the human rights claim, the grounds of appeal to the First-tier Tribunal were generic and unparticularised, merely asserting that the removal of the appellants from the UK would be unlawful under section 6 of the Human Rights Act 1998. The grounds in the application for permission to appeal assert simply at [2(v)] the the judge failed to consider or at all or in any event Article 8 or 276ADE private life – there is no consideration or assessment on this point at all in the determination." At [15] of the grounds it is further asserted that, "the judge has not assessed the Appellants (sic) very significant obstacles in integration upon return under 276ADE or Article 8 ECHR proportionality." The appellants' skeleton argument and the oral submissions at the First-tier Tribunal appeal hearing also referred to the human rights claim in very general terms and without particularity. The tribunal has no satisfactory evidence as to any significant private life in the UK and Mr Khan advanced no such circumstances in his submissions. In the circumstances, it is doubtful whether the judge was even required to address such an unparticularised claim.

16. It is clear that the First-tier Tribunal Judge did not address article 8 ECHR at all in the impugned decision. The human rights claim having been raised in very brief and generalised terms, it ought properly have been addressed in the decision, however briefly, given the circumstances. However, even if the decision of the First-tier Tribunal had specifically addressed article 8 ECHR, I am satisfied for the reasons set out below there is no basis upon which such a claim could succeed for either appellant, so that the error was not material to the outcome of the appeal.

17. Neither appellant claimed a partner or children in the UK. Whilst, as referenced above, there were various extended family members in the UK with whom the respondent conceded the may have a familial relationship, such relationships were insufficient to engage the Rules in respect of family life and could only be considered as part of their private life pursuant to article 8 ECHR outside the Rules. There was no evidence of any ties going beyond those to be expected between extended family members. More significantly, none of those extended family members have any lawful status in the UK, so that any familial relationship either appellant may have with such family members can reasonably be expected to continue in Albania. There was no lawful basis upon which such relationships could continue in the UK.

18. It was not argued before me that either appellant could meet the requirements of the Immigration Rules, either under Appendix FM or paragraph 276ADE (very significant obstacles to integration). On the rejection of their protection claim it follows that there was no basis for finding very significant obstacles to integration in the relatively short time that has elapsed since they arrived in the UK.

19. Whilst they came to the UK as minors and have attended schooling in the UK, they have spent the vast majority of their lives in Albania. Given the judge's rejection of their factual claim and that they admitted to the First-tier Tribunal to having lied about 'Uncle Ramadan', admitting that at least one of their respective fathers brought them out of Albania, and that they both remain in regular contact with their family members in Albania, there is no reason why they cannot reasonably be expected to return to their respective families in Albania, of which country they speak the native language and are fully familiar with the culture and society of their nationality. On the findings of the First-tier Tribunal, there is nothing for them to fear on return to Albania and they are certainly young enough to pick up their lives there and pursue further education and/or careers. It is beyond debate that their best interests, which the Tribunal has to take as a primary consideration pursuant to Section 55 of the Borders, Citizenship and Immigration Act 2009, are to return to their families in Albania as soon as possible. They are not entitled to remain in the

UK simply because that is their wish and because they have managed to enter and remain here illegally for some three years.

20. Further, pursuant to s117B of the 2002 Act, in any article 8 proportionality assessment, the Tribunal must consider that immigration control is in the public interest. The statute also requires that little weight be accorded to private life developed in the UK whilst immigration status is either unlawful or precarious, both of which criteria apply. I have carefully considered the submissions of Mr Khan, but in reality nothing has ever been advanced in respect of private life that could either meet the Rules or amount to exceptional or compelling circumstances sufficient to justify granting leave to remain on the basis that otherwise removal to Albania would be unjustifiably harsh. In the circumstances, it must follow that the the decision of the respondent was unarguably proportionate and not disproportionate to the respective human rights of either appellant.

21. In summary, even taking the human rights aspect of their case at its highest, I can see no basis upon which either appellant, even as minors, could possibly have succeeded on human rights grounds, within or without the Rules. It follows that even if the First-tier Tribunal had gone on to make a reasoned article 8 assessment, their appeals would inevitably have failed on human rights grounds, in addition to the appeals being dismissed on asylum and humanitarian protection grounds. It serves no purpose to set aside the decision for this error when inevitably it would be remade by also dismissing the appeal on human rights grounds in addition to the dismissal of the protection claim. It follows that the error, if there was an error, was not material.

Decision

There was no material error of law in the making of the decision of the First-tier Tribunal;

The appeal of each appellant to the Upper Tribunal is dismissed on all grounds;

The decision of the First-tier Tribunal stands and the appeal of each appellant against the decisions of the respondent is dismissed.

I make no order for costs.

Signed: *DMW Pickup*
Upper Tribunal Judge Pickup

Date: 27 July 2020

Anonymity Direction

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

> "*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 to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings*."

Signed: *DMW Pickup*
Upper Tribunal Judge Pickup

Date: 27 July 2020