Upper Tribunal (Immigration and Asylum Chamber) **Appeal Number: PA/00665/2019**

THE IMMIGRATION ACTS

Heard at Field House (via Skype)	**Decision & Reasons Promulgated**
On 1 February 2021	**On 15 February 2021**

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

FD (ALBANIA)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Symes, instructed by Connaught Law
For the Respondent: Mr D Clarke, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is an Albanian national who was born on24 February 1991. He appeals, with permission granted by Upper Tribunal Judge Sheridan, against a decision which was issued by First-tier Tribunal Judge P-J S White on 16 April 2020.

2. By that decision, Judge White ("the judge") dismissed the appellant's appeal on protection and human rights grounds. It is accepted by Mr Symes that the judge's findings in the latter respect – reached, as they were, in the context of a decision to deport the appellant on grounds of serious criminality – are unimpeachable. It is submitted, however, that the judge erred in deciding the protection ground of appeal against the appellant.

Background

3. I need only sketch the relevant background, a detailed account of which was set out by the judge at [1] and [6]-[8] of his decision.

4. The appellant sought asylum unsuccessfully in 2013 and returned to Albania. He returned to this country unlawfully and stayed for a year or so with his British girlfriend but he once again returned voluntarily in November 2014. He came back for a third time in 2015 and he was subsequently found guilty of possession of a class A drug with intent to supply and possession of an article for use in fraud. He was deported after his sentence. He re-entered a fourth time, after which he was arrested by the police.

5. The appellant was referred to the National Referral Mechanism by the police. On 30 October 2017, he was accepted on conclusive grounds to be a victim of modern slavery. The Competent Authority accepted, therefore, that the appellant had been brought from France to the UK by a gang of traffickers who had led him to believe that he would be able to repay his debt to them by working in the construction industry. Upon arrival, however, he was told that he would have to repay the debt by dealing drugs. He was given a quantity of cocaine, a fake driving licence and a car by the traffickers. He went to the police, surrendered the drugs, and told them what he knew.

6. In due course, representations were made by his former solicitors (Wilsons), requesting the revocation of the deportation order and seeking leave to remain as a person in need of international protection or on the basis of his relationship with his British partner and their child. The respondent refused that claim on 7 January 2019. Like the Competent Authority, she accepted the account that the appellant had given. She did not accept that he would be at risk on return to Albania, however, and she did not consider that his deportation would be in breach of his human rights.

The Appeal to the First-tier Tribunal

7. The appellant appealed to the First-tier Tribunal. His appeal was heard by the judge on 25 February 2020. He heard evidence from the appellant and his partner. He heard closing submissions from the Presenting Officer (not Mr Clarke) and counsel representing the appellant (not Mr Symes) before reserving his decision.

8. The judge found that the appellant had been convicted of a particularly serious crime but that he had rebutted the presumption that he represented a danger to the community of the United Kingdom: [15]-[18]. He therefore discharged the certificate under s72 of the Nationality, Immigration and Asylum Act 2002 and proceeded to consider the substance of the appellant's protection claim at [20]-[29]. I will return to the reasoning in those paragraphs shortly since it forms the battleground for this appeal. It suffices for present purposes to state that the judge did not consider the appellant to be at risk on return to Albania, despite his acceptance of much of the appellant's account.

9. The judge then turned to Article 8 ECHR, finding that the appellant could meet neither of the statutory exceptions to deportation and that there were no very compelling circumstances which outweighed the public interest in that course. So it was that the appeal was dismissed on all grounds.

The Appeal to the Upper Tribunal

10. Permission to appeal was refused by the FtT but granted on renewal by Judge Sheridan. There is a single ground, which is that it was perverse for the judge to conclude that the appellant would not be at risk from the traffickers upon return to Albania, given the positive findings of fact he had made in other respects.

11. In his concise submissions, Mr Symes confirmed that the only live dimension of the appeal was international protection. The judge had resolved the certificate under s72 of the 2002 Act in the appellant's favour and the focus was on his assessment of the risk faced by the appellant. The proper starting point in the decision under challenge was [29], in which the judge had concluded that the evidence did not show a continuing adverse interest in the appellant on the part of the traffickers. It was necessary to consider the reasoning which had led the judge to that conclusion with care. The judge had taken account of the expert reports of Dr Tahiraj and Dr Korovillas and had said at [21] that he had accepted their opinion that the traffickers might have an interest in regaining control over him. The judge had had posed a question at the end of [21], which was whether the traffickers had the incentive and the ability to look for him. The answer to both questions was plain, however. Dr Korovillas had concluded that the traffickers would have a clear financial incentive to recapture the appellant and the judge had accepted that it was likely to be relatively easy for anyone to search the municipal records to find another person. It was not possible, Mr Symes submitted, to reconcile the judge's acceptance of both points with the judge's ultimate conclusion at [29]. The judge had erred, Mr Symes submitted, in treating the absence of significant interest in the appellant's family as determiative of the absence of a risk to the appellant. To do so was to reach a finding which was irrational on the basis of the evidence before the FtT.

12. For the respondent, Mr Clarke submitted that the focus of the grounds was very narrow; that the threshold for perversity was high; and that neither the grounds nor Mr Symes' submissions did justice to the judge's reasoning. There was a tendency in the grounds to confuse the judge's careful and nuanced findings with his recitation of the evidence. The grounds also failed to appreciate the context in which the judge had made his findings. The traffickers were of Albanian nationality but they had been operating in France. The judge's conclusion that there was no appreciable risk in Albania was open to him. The judge's decision had been made with the experts' opinions firmly in mind. The experts had not been able to state whether this particular gang would target this particular appellant in Albania and that was a matter of assessment for the judge, who had noted at [22] that it 'all depends on the decision of the gang'. Properly understood,

the judge had found that the appellant's family had not been threatened or harmed by the gang and that the appellant had been left alone in the United Kingdom. The finding at [29] was to be interpreted in light of that earlier reasoning. Given the judge's earlier conclusions, the ultimate finding was properly open to him and could not be categorised as perverse.

13. Mr Symes replied briefly. He submitted that decisive weight had been given to the absence of prolonged interest in the appellant's family. It was clear, he submitted, that the judge had accepted that the appellant's mother had been threatened and that his brother had been attacked by the gang. In any event, Mr Symes asked rhetorically, to what extent might it properly be said that the treatment of the appellant's family was indicative of the treatment which might be received by the appellant himself? Mr Symes noted that the judge had drawn on the absence of threats from the gang in the United Kingdom but he submitted that different considerations were at play in this country, which did not suffer from the significant corruption amongst the police and judiciary which was prevalent in Albania.

14. I reserved my decision on whether the judge's decision involved the making of an error on a point of law.

Analysis

15. It is accepted on all sides that the critical finding in the judge's decision is to be found in [29], in which he stated that the evidence does not show that the traffickers have a continuing interest in the appellant. Mr Symes maintains that this is a conclusion which was reached by an illogical, and therefore irrational, process of reasoning. For the respondent, Mr Clarke submits that a close reading of the judge's decision shows that the reasoning was cogent, compelling and certainly not irrational. For the reasons which follow, I have come to the clear conclusion that Mr Clarke's submissions are to be preferred and that the appellant's appeal should be dismissed.

16. The judge's decision is obviously to be read as a whole. It is apparent that he was alive to the rather unusual nature of the appellant's protection claim. He noted at [18] that the appellant had been involved with criminals and drug dealers in the United Kingdom in order to pay his debt to the traffickers, observing that this was "unusual and of considerable importance". He went on in the same paragraph to note that he had betrayed the gang who were holding him, despite the fact that they knew the address of his partner in the United Kingdom. The judge stated that this was hardly 'risk free' and was the clearest indication of the appellant's determination not to be involved in serious crime again. It was partly for this reason (and partly because the OASys assessment reflected a low risk of reoffending) that the judge discharged the certificate under s72, finding that the appellant had rebutted the presumption that he was a danger to the community.

17. The judge then noted that he had a volume of background material, including a very lengthy ARC report which concerned the general risk

in Albania from human traffickers. The judge considered that this did not bear on the appellant's case to any great extent, since his case was that he was 'at specific risk from the gang who brought him to the United Kingdom'. He noted that the appellant had betrayed the gang by turning himself and the drugs into the police. A further limitation of the ARC report, the judge noted, was that it concerned traffickers in Albania, whereas the appellant had been trafficked from Dunkirk, which was where he had first encountered the traffickers: [20]

18. At [21], the judge moved from the ARC report to the expert reports from Dr Tahiraj and Dr Korovillas, both of whom he accepted were to be regarded as experts. He summarised Dr Korovillas' report in the remainder of [21]. Midway through that paragraph, the judge observed as follows about one aspect of Dr Korovillas' opinion:

> He suggested that the traffickers would have an interest in recapturing the appellant, both as their debtor and as a person with some inside knowledge who thus posed a threat. I certainly accept that these are reasons why they might have an interest in regaining control over him, and another might be to make an example of him, but this does not address whether they have the ability to recapture him.

19. The judge continued in the same paragraph to note the reasons given by Dr Korovillas for concluding that the appellant could not relocate within Albania, it being a small and traditional country in which outsiders would be likely to be questioned about their origins. The judge concluded this paragraph as follows:

> Finally, there is the system of civil registration, which will require him to provide his details within a short time of moving to any new area, but given the high levels of corruption it is likely to be relatively easy for anyone seeking him to gain access to the municipal records. Again I see some force in this, if it is clear that there would be someone with the incentive and ability to look for him.

20. The judge noted the broad agreement between Dr Tahiraj and Dr Korovillas on various matters in [22]. In the concluding sentences of that paragraph, he observed that Dr Tahiraj had noted:

> pertinently that 'it is difficult to state the extend [sic] of the risk to the appellant from the gang that trafficked him for the purpose of exploitation, as it all depends on the decision of the gang'. She goes on to say that if they do decide to pursue him the risks would in her view be real."

21. The judge then turned to focus upon the question he had posed in the section above, of whether the gang had decided to pursue the appellant. He framed that enquiry at [23], noting that the respondent had observed in the refusal letter that there was no evidence that these traffickers had the ability to pursue the appellant to Albania or that they had in fact taken any adverse interest in the appellant or his family.

22. At [24], the judge noted that the appellant had given an inconsistent account of providing his mother's mobile number to his traffickers, stating on the one hand that he had done so before he was brought to the UK and, on the other hand, that it had occurred after he came to the UK. The judge observed that 'the two versions cannot both be right'. At [25], the judge noted that the appellant's suggestion that the gang was rich and powerful was unsupported by any specific evidence in the witness statement, despite this being 'a diligently prepare [sic] appeal'.

23. At [26], the judge considered the evidence that the appellant's mother had received a threatening telephone call and that his brother had been attacked. He noted the absence of detail in the statements and the absence of supporting evidence. No dates were given for either incident. There was nothing from the hospital. The incidents had not been reported to the police.

24. At [27], the judge noted that the appellant had stated that the family had reported no further incidents; that they remained in the family home; and that they had not paid anyone anything. He also noted that the appellant and his partner had experienced no difficulties in the UK, despite the fact that they were aware of the address in which she was living, having taken the appellant there in the past.

25. The final two paragraphs in the judge's analysis must be reproduced in full:

> [28] I am concerned about the lack of any detail in the statements from his family, about the absence of supporting medical evidence of a 2 day hospitalisation, and about the failure to report either of these apparently serious incidents to the police. I do not understand why, if the appellant had told them he was trafficked, neither witness apparently has any idea what sort of trouble he might be in, nor why, if he has told them nothing, as they suggest, and they have two siblings unlawfully in the United Kingdom, they should assume these incidents are related to the appellant. If the traffickers are indeed behind either of these incidents, I do not understand why they intended to achieve, given their complete silence on why they were doing this. Finally, I struggle to see that these two isolated incidents, both now a considerable time ago, are evidence of a determined attempt to ding and punish or recapture the appellant. For all these reasons I am not satisfied that the this aspect of the evidence is reliance or capable of being given any weight.
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> [29] I have considered all this evidence with case and in the round. I can see reasons why the people who trafficked the appellant from France not [sic] the United Kingdom might have an interest in finding him again, and I find the reports persuasive evidence that if they wanted to find him and had links or influence in Albania it is significantly unlikely that he could relocate safely, and there is a real risk that he could

> not access protection. I am not, however, persuaded on the evidence tat [sic] there is a real risk that he will be pursued there. Whether because they lack the resources or because they have decided otherwise (as Dr Tahiraj envisaged) the evidence does not show a continuing adverse interest. I am not therefore satisfied, even to the low standard appropriate, that the appellant is at real risk of serious harm on return. Th claims to asylum, humanitarian protection and under Articles 2 and 3 fail on that account.

26. It is clear that the judge accepted the thrust of what had been said by Dr Korovillas and Dr Tahiraj, as regards the possibility of the appellant's traffickers maintaining an interest in him and the inadequacy of the safeguards which might be available against any such risk in Albania. Properly understood, the judge's focus was on whether that possibility was a real risk on the facts of this case. He did not derive a great deal of assistance from the ARC report, which spoke to the generalities, and he noted what had been said by Dr Tahiraj about 'the decision' which had been made by the specific traffickers responsible for bringing the appellant to the UK and involving him in the drugs trade against his will for a second time. The strands of reasoning which led to his conclusion that there was no continuing adverse interest were logical and rational. He was concerned by the inconsistent accounts of the appellant giving his mother's telephone number to the traffickers and by the lack of detail in the claim that the gang was powerful and well-connected. The absence of detail in the accounts given by the mother and brother in their statements were also legitimate matters of concern.

27. The judge was also clearly entitled to attach weight to the fact that the traffickers, who operate in the UK and who know where the appellant's partner lives, have taken no action against her whatsoever. Mr Symes was minded to accept that this was a relevant matter for the judge to take into account, although he noted that different considerations might apply in Albania where corruption is rife. Whilst that might be so, a gang with involvement in the trafficking of people and the sale of class A drugs is clearly not intent on abiding by the laws of the United Kingdom. The fact that the appellant had not been contacted, threatened or harmed since he went to the police in the UK was properly a matter of significance in the judge's assessment.

28. The judge concluded that the threat to the appellant's mother and the attack on his brother was not 'reliable or capable of being given any weight'. I asked both advocates at the hearing how I should understand that finding at the end of [28]. Mr Clarke submitted that it represented a rejection of the appellant's account. Mr Symes submitted that it represented an acceptance of the appellant's account but a decision that these incidents failed to demonstrate a risk to the appellant. On proper analysis, however, the judge made both findings, the second in the alternative to the first. For the reasons he had given previously, he did not accept that the claims were reliable. In the alternative, he considered that the two incidents did not establish the appellant to be at risk. I consider both of those findings to have been reached rationally, when considered as part of the decision as a whole.

29. Taking a step back, the logical threads running through the judge's decision are clear. He was conscious of the unusual nature of the appellant's claim and of the expert evidence which suggested that his traffickers *might* seek to target a person in his position when they returned to Albania. Looking at the specific facts of this case, and bearing in mind the unsatisfactory nature of certain aspects of the evidence, however, the judge did not consider the appellant's traffickers to retain any interest in him. That was not a finding which was flatly at odds with the expert evidence; it was a finding reached with the expert evidence (and that of Dr Tahiraj in particular) firmly in mind. The basis upon which the judge reached that conclusion was not, as Mr Symes suggested at one point, based on nothing more than the lack of constant targeting of the appellant's family in Albania. The judge took into account a range of other matters, including the traffickers being based in France and the UK and the absence of any adverse interest in the appellant since he had betrayed them in this country. The findings of fact were logical, as were the inferences drawn from them. The judge was entitled to find against the appellant on protection grounds for the reasons that he gave. The appeal will be dismissed accordingly.

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Notice of Decision

The decision of the FtT did not involve the making of an error on a point of law. The appellant's appeal is dismissed and the decision of the FtT shall stand.

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. I make this direction in light of the claims made by the appellant and not because I have accepted there to be any particular risk to him in this country or in Albania.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber
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February 2021