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

**Appeal Number: IA/02605/2020**
**UI-2021-000424; HU/50959/2020**

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On the 12 May 2022** | **On the 18 July 2022** |

**Before**

**UPPER TRIBUNAL JUDGE BLUNDELL**

**Between**

**MS (ALBANIA)**
**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Ms V Easty, instructed by Ashgar & Co Solicitors
For the Respondent: Ms H Aboni, Senior Presenting Officer

**DECISION AND REASONS**

1. The appellant, an Albanian national who was born on 17 January 2002, appeals with the permission of Upper Tribunal Judge Owens against the decision of Judge Dempster to dismiss his appeal against the respondent's refusal of his human rights claim.

**Background**

2. The appellant arrived in the United Kingdom clandestinely in February 2019. He made an application for leave to remain outside the Immigration Rules on 4 June 2019. He was not interviewed in connection with that application and his claim was taken from a letter which his solicitors had provided in support of the application. It was stated in that letter that the appellant had lived with his mother and

father in Albania until 8 March 2018, when his father had passed away. His mother then left the family home and returned to her parents, abandoning the appellant. He had no support in Albania and had left the country in order to visit his sister in Germany, whereupon he met other Albanians who said that they could bring him to the United Kingdom. Since arriving in this country he had met an Albanian who had known his late father. The appellant had lived with this man ever since. He feared return to Albania, where he would be homeless and bereft.

3. The respondent considered the appellant's application under paragraph 276ADE(1)(vi) of the Immigration Rules and Article 8 ECHR. She did not accept that the appellant was eligible for leave to remain under the former provision because he was under eighteen at the date of his application. She did not consider that the appellant's removal would place the respondent in breach of her obligations under the Human Rights Act 1998 because he had resourcefully integrated into the UK and could do the same upon return to Albania, where he would have available to him financial assistance under the Assisted Voluntary Return Scheme. He could live alone in Albania and could obtain employment there.

**The Appeal to the First-tier Tribunal**

4. The appellant appealed and his appeal came before the judge, sitting at Hatton Cross, on 26 May 2021. The appellant was represented by his solicitor, the respondent by a Presenting Officer (not Ms Aboni). The appellant gave oral evidence and then the hearing was adjourned to enable the Presenting Officer to consider the appellant's response to the respondent's review and, in particular, a report cited in that response: *Albania, Trafficked boys and young men*, by the ARC Foundation, date May 2019. The hearing resumed on 9 June 2021. The judge heard submissions before reserving her decision.

5. In her reserved decision, the judge found that the appellant had been untruthful about his circumstances in Albania before his departure. She accepted that his father had passed away in 2018 but she found that his evidence about his family in Albania had been 'completely inconsistent'. She was unable to accept that he was without support in Albania, or that his neighbours had supported him for a little while only to abandon him, leaving him completely alone without access to food or money. Nor did the judge find it credible that the people who had brought the appellant to the UK would have lost touch with him without having received payment. The judge concluded her analysis of this aspect of the claim with the following conclusions:

> [38] On the totality of the evidence before me, I do not find that, as at the date of the hearing, there would be very significant obstacles to the appellant's integration to Albania. He speaks Albanian. He spent the first 16 years of his life in that country and received a level of education there. I do not find him to be a credible witness as to the level of support he has in that country or available to him from his sibling in Germany. I do not find his account of being trafficking to the UK by an agent to whom he owes money to be credible and I

> find therefore, on the totality of the evidence before me, that the appellant has not established that he is isolated in Albania and a person who fits the profile of a victim of trafficking in the ARC report relied on by the appellant in support of his claim and therefore, I do not find he is at risk of being trafficking on return.

6. Having found for those reasons that the appellant did not meet paragraph 276ADE(1)(vi) of the Immigration Rules, the judge proceeded to consider the human rights claim outside those Rules. She accepted that he had a private life in the UK but she did not accept that his removal would give rise to unjustifiably harsh consequences so as to be disproportionate under Article 8(2) ECHR. Various parts of s117B of the Nationality, Immigration and Asylum Act 2002 weighed against him. He had spent 16 years in Albania; there were no social or cultural barriers to his returning; he could maintain contact with his friends in the UK; he would 'have access to some support in Albania, even if only for a short time.' Under the sub-heading 'Conclusion' the judge drew together the strands of her assessment of the human rights claim in this way:

> [52] Balancing these competing factors, I find those in favour of the appellant's removal, and the disruption to his private life in the United Kingdom that would involve, outweigh those in favour of him maintaining his private life in the UK. My findings mean that the appellant is a young man whose return to Albania would not impose upon him any more difficulties than on any other person of a similar age. On his own evidence, one sister at least has offered some form of financial support in the relatively recent past and there is no reason or explanation provided as to why such support would not be available in the future, at least in the short term. I accept that the appellant wishes to stay in the UK where, on his evidence, he considers that he has found a new family but he cannot meet the requirements of the Rules which represent requirements imposed by the democratically elected Parliament and implemented after a period of consultation. On my findings, there is nothing about the circumstances of this case which lead me to find that removal to Albania would result in unjustifiably harsh consequences. I note the young age of the appellant, who, at the date of the hearing, was aged 19 years, but in my judgment the very limited factors in favour of the appellant retaining his private life in the UK do not outweigh the public interest in immigration control and, for the reasons stated above, I do not find that there are compelling reasons to offset the considerable public interest in the removal of the appellant.

## The Appeal to the Upper Tribunal

7. Permission to appeal was sought and initially refused by First-tier Tribunal Judge Neville. Only one of the two grounds of appeal was pursued on renewal. The point may be summarised quite shortly: in

finding that the appellant would not be at risk of trafficking on return to Albania, the judge overlooked material risk factors set out in the ARC report. Judge Owens considered the point arguable.

8. In her skeleton argument and her concise oral submissions, Ms Easty accepted that the judge had made adverse findings about the appellant's account but submitted that those findings were not dispositive of the appeal; the appellant's circumstances were said in the ARC report to place him at higher risk of trafficking notwithstanding those adverse findings. The judge failed to consider whether the appellant would be at risk of trafficking on account of those uncontentious factors.

9. On behalf of the Secretary of State, Ms Aboni submitted that the judge had found that the appellant's circumstances on return to Albania would not be as he had claimed. It was apparent that the judge had found that the appellant would have some support on return to Albania and that he would not be as isolated as he had suggested. In light of the judge's findings of fact, there was no viable claim that the appellant would be at risk of trafficking or, therefore, that he would experience very significant obstacles to his reintegration to Albania.

10. Ms Easty replied briefly to underscore her submission that the adverse findings were not dispositive of the appeal.

11. I reserved my decision at the end of the submissions.

**Analysis**

12. On my first reading of the judge's decision, I arrived at a conclusion which accorded with the submission made by Ms Aboni. The burden of proof was on the appellant to demonstrate that there were very significant obstacles to his reintegration to Albania. He was required to demonstrate that on the balance of probabilities. He sought to do so by submitting that he had a package of vulnerabilities (low education, difficult family background, etc) and that he had no family or other support upon which he could call in order to ameliorate those problems by rendering him more able to integrate and less vulnerable to trafficking. The judge rejected his account of having no family support in Albania and must therefore have concluded that he would not be at risk on account of his vulnerabilities because he would have access to support on return.

13. Were it not for thirteen words in the judge's decision, that is certainly the conclusion I would have reached. In light of the thirteen words in question, however, I am unable to conclude that the judge proceeded on the basis that the appellant would have support in Albania such that his vulnerabilities would not expose him to a risk of trafficking.

14. The words in question appear in [50] and [52] of the judge's decision, in which she concluded that the appellant would have some support in Albania 'even if only for a short time' and "at least in the short term'. Try as I might, I have not been able to understand these observations about the support available to the appellant in Albania. If, as appears to be the case, the judge concluded that the appellant could access

support from his family, I do not understand why the judge thought that there would some sort of temporal limitation on that support, how long that limitation might be, and (perhaps most importantly) what the appellant would do when that support came to an end. It seems clear from the two observations in [50] and [52] that the judge concluded that the appellant could not rely on long-term support from his family but I cannot understand why that was so.

15. The judge failed, therefore, to set out with clarity what she found would be the appellant's circumstances on return to Albania. In light of the apparent temporal limitation on the family support which the judge found to be available, it was incumbent upon the judge to consider whether the appellant would experience very significant obstacles to integration to Albania after the 'short term' support from his family came to an end. In undertaking that assessment, the judge was required to consider the package of factors highlighted in the ARC report, many of which applied to the appellant. Instead of conducting that assessment, the judge purely on the 'short term' position in which the appellant would find himself and that, in my judgment, was to fail to conduct a sufficiently rigorous enquiry under paragraph 276ADE(1)(vi).

16. I have some sympathy with the judge, who found for good and proper reason that aspects of the appellant's account were untrue. The reasons given for finding that the appellant had lied about the location of his siblings were particularly compelling and were wisely not the target of any grounds of appeal before me. But those findings did not obviate the need to consider and make sufficiently detailed findings about the appellant's circumstances on return to Albania so that he could understand why he had been unable to discharge the burden on him of establishing his human rights claim. In my judgment, the judge failed to discharge that obligation in that she failed to consider material matters and she failed, as a result, to give adequate reasons for dismissing the appeal on Article 8 ECHR grounds.

17. It follows that the decision of the judge is vitiated by legal error and cannot stand. I have considered carefully the appropriate relief which should follow from that finding. In light of the findings of fact which are absent from the decision of the FtT, the exercise which must now be undertaken is a wide-ranging one, in which precise findings of fact must be made about what awaits the appellant in Albania and whether those circumstances suffice to overcome his apparent vulnerability to trafficking on account of the factors in the ARC report. It was accepted by the FtT that the appellant's father passed away but clear findings will need to be made about what, if any, support might be available from the appellant's family. Any financial support available to the appellant through the Assisted Voluntary Return Scheme must also be assessed in order to ascertain whether that, in combination with any assistance from the Albanian state, might alternatively suffice to insulate the appellant from any risk of trafficking.

18. I have borne in mind what was said by the President in AB (preserved FtT findings; Wisniewski principles) Iraq [2020] UKUT 268 (IAC) and have considered whether it would be appropriate to direct that certain

findings made by the FtT should be preserved. In my judgment, it would be impossible and impractical to attempt to 'ring-fence' parts of the FtT's assessment of the appellant's account, given the scope of the enquiry which must now take place. It is in those circumstances that I shall direct that the appeal be remitted to the FtT for hearing de novo before a judge other than Judge Dempster.

19. I should add one concluding observation. It was seemingly agreed before the FtT that the appellant might be able to satisfy paragraph 276ADE(1)(vi) of the Immigration Rules if he established that there were very significant obstacles to his reintegration to Albania. Whilst that agreement was not revisited before me, I do not presently understand how it was reached. The appellant was under eighteen at the time that he made his application to the respondent and is, to my mind unable to meet the age requirement in that Rule. The fact that the appellant has subsequently attained his majority is immaterial, in my judgment, where the Rule in question contains what has been described in the authorities as a 'fixed historic timeline'. As presently advised, therefore, I cannot see how the appellant might be able to satisfy the requirements of this particular Immigration Rule, but there must be argument on that point on remittal.

**Notice of Decision**

The appellant's appeal is allowed. The decision of the FtT is set aside in full. The appeal is remitted to the FtT to be considered afresh by a different judge.

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

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court**.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

**15 June 2022**