IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000184

First-tier Tribunal No: PA/56030/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 5th of October 2023

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

AM
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms V Easty, of Counsel, instructed by Brighton Housing Trust
For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

Interpretation:

Heard at Field House on 26 September 2023

Order Regarding Anonymity

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.

DECISION AND REASONS

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Introduction

1. The appellant is a citizen of Albania born in May 2002. He arrived in the UK on 18th March 2019 when he was 16 years old. He claimed asylum on 12th April 2019. His claim was refused on 25th November 2019. His appeal against the decision was dismissed on asylum and human rights grounds by First-tier Tribunal Judge Row after a hearing on the 29th September 2022.

2. Permission to appeal was granted and I found that the First-tier Tribunal had materially erred in law for the reasons set out in my decision which is appended as Annex A to this decision.

3. The matter comes back before me now to remake the appeal. It was agreed that the plausibility findings at paragraphs 46 to 54 of the decision of the First-tier Tribunal could be preserved as there was no challenge to these. In summary these are as follows. That the appellant had made every effort to cooperate with the asylum process and document his claim except he could have asked his mother for a witness statement (which now forms part of the evidence before the Upper Tribunal). His claim was consistent with the country of origin materials, and in particular it was plausible that the three men whom were said to be owed money by the appellant's father would pursue him rather than his sisters for this debt. It was plausible that the three men would also think that they were more likely to be paid by threatening the appellant than his father directly. It was not implausible that the appellant's brother did not wish to pay the debt. It was also not implausible that the appellant did not trust the Albanian police and did not report the matter to them.

4. At the start of the hearing arrangements were made for the conduct of the appeal to reflect that the appellant was a vulnerable witness. The proceedings were carefully explained to him; care was taken to rephrase any question that was potentially too complex; and he was given an over-view of the topics he would be cross-examined upon by Mr Wain, and opportunities for breaks whilst giving evidence. The appellant appeared somewhat tense but was able to answer the questions put to him, and I am satisfied that the hearing gave him the opportunity to give his evidence notwithstanding his vulnerabilities.

Evidence & Submissions – Remaking

5. In his written statements, asylum interview and oral evidence the appellant says, in summary, as follows. He was born in Durres in Albania in 2002 and lived there whilst he lived in Albania. His father was a shepherd who looked after and milked sheep for a

man from Kukes. His mother is unwell with a heart condition and epilepsy. They were not wealthy and lived in a small single storey two bedroom house. He is the youngest child of the family. He has three older sisters and an older brother. His sisters are all married and have moved away from the family home, and his brother is married and lives in the UK. The appellant went to school until he was 14 years old.

6. The appellant did not have a good relationship with his father who was angry and on occasion violent towards him, and he believed his older siblings likewise did not have a good relationship with him as his sisters rarely visited, even the sister who lived in the same village, and until he came to the UK he had not seen his brother since he was 8 years old. At the time of the incident outlined below he understood that his brother lived either in Tirana or worked abroad but did not know that he was living in the UK. Since entering the UK he has become aware that his brother lives here and is married to a Polish woman with whom he has a child. The appellant's evidence is that his father's problems originated with the fact that he is a gambling addict, and would often lose money and this made him angry. As a result he and his parents often did not have enough money for food and the medications his mother needed for her illnesses. The appellant started to work doing gardening and odd jobs so he could have food, and although his father would demand the money from him he did not give him the full amount he earned but kept some back.

7. In approximately January or February 2019 three men came to the house in the evening. He was woken up by shouting, as they were demanding to see the head of the household as he owed them money. One of the men had knuckledusters and they had a metal bar with them. One of the men punched him very hard on the side of the head and temporarily he lost consciousness, and was left with a large bump on his head. When he regained consciousness his mother was there, in a bad state, and his father appeared. The men threatened to kill the appellant if his father did not pay the money his owed the men, and said that they would be back. His father said he could not pay. The appellant was very afraid when he heard the threat. He did not seek medical treatment at the hospital as he was afraid that the men would find him there and kill him. Since this time he has suffered from headaches, insomnia, nightmares and problems concentrating. The appellant returned to work the next day however, and set about saving as much money as he could to escape. From this time he refused to give his father any of his earning even though he beat him as a result. With the help of his mother the appellant obtained a passport. He managed to save 200 Euros from his work, and he borrowed 120 Euros from an older friend who worked as a waiter. He used this money for his escape.

8. The appellant's mother accompanied him to Greece. He travelled legally to Spain, and then smuggled himself under a lorry on to a ferry in Santander which sailed to the UK. He claimed asylum on arrival in the UK on 12th April 2019. His initial screening interview was taken over the telephone. He was very tired, not feeling well and could not understand the interpreter properly due to the phone line breaking up. He does not have a good recollection of what he said in this interview but maintains it was a very short interview and that he could not give a full account for these reasons.

9. Since coming to the UK the appellant has been in touch with his mother occasionally, and 3 or 4 weeks after he left Albania she told him that the men had returned to the house, and that they were looking for him. His father is apparently unconcerned that the appellant has left home or about his fate. The appellant believes that if he returned to Albania the men would kill him as revenge on his father, and perhaps so that they could sell him for body parts. He does not believe that he would be protected by the police in Albania. He believes that the men are criminals who would seek him out wherever he was in Albania and kill him.

10. The appellant feels very well supported in the UK. He sees his brother, who also lives in Oxford, once a week and goes with his brother's children to the park and cinema. His brother is like a father and gives him good advice, and being around his brother makes him feel less stressed. He also gives him some financial support. He does have occasional contact with his mother, usually short conversations on Snap Chat using her neighbour's phone. Neighbours in Albania have told the appellant's mother that the men had been back looking for the appellant one day when she was not at home. He is not receiving any medical treatment for his mental health problems in the UK but he is considering seeking such help.

11. The appellant's brother's evidence, both oral and from his statements is in summary as follows. He left Albania firstly in 2005 when he went to work in Greece to help support the family, and then came to the UK in March 2012. Whilst in Greece he had only very limited contact with his mother just to check she was okay as he did not have a mobile phone at that time. His mother was aware that he had moved to the UK but his brother was not aware he was here as he was very young at the time. He has only returned on two occasions to Albania since he came to the UK. On the first occasion, in 2020, he did not go back to his home area and just saw friends. On the second visit in 2022 he went to see his mother, but did not see his father as he was drunk. He did not spend most of his time there however as he stayed with his family in a hotel in Saranda, and did tourist things with them. He did not have contact with his family in Albania after 2005 until this visit as

he did not want to, and he did not know about the appellant's situation which arose in 2019 until recently as he did not want to be involved. Now he has decided that this was not the right position, and he wants to give evidence and assist the appellant. He provides the appellant with a small amount of financial help, which he would try to maintain if he were sent to Albania, but he cannot give much money as he has a family of three to support in the UK and he sends money to his mother to support her in Albania.

12. The appellant's brother says that their mother has confirmed to him that his father has gambling debts which he cannot pay off because he doesn't work enough and because he drinks his wages, and that their father is being threatened by those to whom he owes money who have beaten him and the appellant. Their mother is very afraid for the appellant, but has ceased to care about her husband/ their father as she believes that he has brought the whole thing on himself and put his family in danger. The appellant's brother believes that the men do not know he is related to his father as he has not been around in Durres for such a long time, and that is why he was safe on his brief visit to his home town in 2022 to see his mother. He explained that the name Manovi is a common Albanian name, and that the family actually changed their name to this name from Sahitaj some fifteen years ago when they moved from Diber to Durres.

13. The appellant's brother believes that the appellant would be at real risk of being killed in Albania, whether he was in Tirana or in his home area, and that he also needs support as he is not okay in the head and has mental health problems. The appellant's mother cannot provide psychological support as she is old and unwell herself. He accepted however that the appellant is capable of doing basic things such as cooking and paying bills for himself.

14. Ms NM, the appellant's mother provided a witness statement which sets out, in short summary, as follows. She suffers from epilepsy, kidney and liver problems and diabetes. She no longer lives with the appellant's father as he is useless and spends all of his money on gambling and drink. She is not sure where the appellant's father lives currently. At the beginning of 2019 she remembers three men barging into the home she shared with her husband and the appellant, and one of them hitting the appellant very hard on the head causing him to pass out for about 3 minutes. When he came around he had swollen head and she could not lift him off the floor. She was afraid to take the appellant to the hospital as she thought the men who had attacked him might find him there. She does not remember taking the appellant to a doctor at any point. She helped him to leave Albania in March 2019. About three or four weeks later the men returned looking for the appellant. Neighbours told her they also came looking for the appellant over

a year ago. She believes that the men would return to look for the appellant if he came back to Albania. She lives on a small amount of money from the Albanian state and remittances from her older son.

15. In addition to the witness evidence the key specific expert evidence is a medical scarring report from Professor David J Roberts, a psychological report from Dr Alice Rogers and a country of origin report from Dr Enekeleida Tahiraj dated 15th September 2022 with an updating annex to her report dealing with more recent evidence relating to country conditions and the latest CPIN report on the latest country of origin reports. I find all of these reports abide by the requirements of the practice direction on expert evidence and are written by very well qualified professionals. No reasons were given by Mr Wain for my finding that these reports they were not evidence on which reliance could be placed. I find that they are evidence on which reliance can be placed.

16. Mr Wain, for the respondent, relied upon the reasons for refusal letter, the respondent's review and submitted in oral submission in short summary as follows, excluding arguments not accepted in the findings preserved from the First-tier Tribunal. It is accepted that the appellant is Albanian and that if his asylum claim was found to be well founded he would have a Convention reason namely social group as a member of his father's family. However it is argued that he has not shown that he suffered violence and threats from people whom his father owed money. It is also noted that the appellant remained at home whilst he earned money to leave Albania after the initial threat in January or February 2019, and was not subjected to any further threats or violence during this time. The appellant said in his asylum screening interview that he had come to the UK for a better life and to support his parents. It is argued that this is the true reason he came to the UK. It is also noted that he did not raise the fact that his attacker was wearing a brown knuckle duster at his asylum interview or in his first statement, this detail first appeared in the appeal statement before the First-tier Tribunal and in the scarring report of Professor Roberts, and that this draws further doubt on the account of the central persecutory incident.

17. Mr Wain argued in addition that if it were found that the appellant has been attacked and threatened by money lending criminals to whom his father owed money that in any case there is sufficiency of protection in Albania and the possibility exists for him to find safety by way of internal relocation. The police would provide sufficient protection. In addition it is not believable that the criminals, whom it is claimed were threatening the appellant and his father, would have any way to know if he returned to Albania and lived in Tirana, where the country of origin evidence shows he

could obtain cognitive behavioural therapy and/ or EMDR for his post-traumatic stress disorder. It is also argued that the money lending criminals who are said to have attacked him would not have the motivation to find the appellant elsewhere, beyond his home area of Durres.

18. It was argued by Mr Wain, relying upon the country guidance cases of EH (blood feuds) Albania CG [2012] UKUT 348 and BF (Tirana – gay men) Albania CG [2019] UKUT 93, that the appellant could safely relocate to Tirana where he would not be able to be identified through the registration system and where he would be able to rely upon a generally effective system of state protection. Despite some problems with corruption, as identified by Dr Tahiraj, there is generally sufficient protection in Tirana. It is argued that the appellant could reasonably relocate to Tirana, and reintegrate in Albanian society on return as he would be eligible for a £3000 UK government grant if he made an assisted voluntary departure to Albania, and that he would be able to obtain some sort of work based on his basic schooling and past work experience in Albania, and would continue to receive some financial help from his brother and psychological support from his mother. Dr Tahiraj raises the possibility of trafficking but this risk is not part of the appellant's claim to remain: he only raises a risk of persecution from the criminal money lenders via violent attacks and killing. As such, it is argued, the appellant's refugee claim, his Article 2 and 3 ECHR claim and his Article 8 ECHR private life claim all fail.

19. At the end of Mr Wain's submissions I informed the parties that I found that the appellant had shown to the lower civil standard of proof that he had suffered the attack from the money lending criminals to whom his father was indebted that he claimed took place in January or February 2019, particularly in light of the medical evidence of Professor Roberts, and that I found that these criminal had made further threats to kill the appellant if the money were not repaid. Ms Easty therefore only needed to focus her submissions on the issues of future risk, sufficiency of protection and internal relocation in relation to the refugee and Article 2/3 ECHR claim and the Article 8 ECHR private life claim. Ms Easty accepted in her submissions that there was not a family life Article 8 ECHR claim.

20. Ms Easty, argued for the appellant, in short summary as follows. She argued that she place reliance on the expert report of Dr Tahiraj. She noted that the expertise of Dr Tahiraj had not been challenged by Mr Wain, and that she is a suitable expert who has written an expert report complying with the relevant practice direction. She argued that the expert evidence shows that the criminal gang would have the motivation, ability and was likely to seek out the appellant were he to return to Albania. She noted that Mr Wain's submissions focused on return to Tirana rather than the

appellant's home area, and implicitly therefore accepted some risk in the home area.

21. Ms Easty argued that the country of origin evidence is that the passage of time and the smallness of the debt is not relevant as to whether the criminals who threatened the appellant will continue to pursue him for his father's debt. She argued that the country of origin evidence shows that there are links between law enforcement and crime, and that the evidence in BF about families not being able to find gay men who relocate to Tirana is not relevant, as in this case it is not the appellant's family/father who is trying to find and threaten the appellant but a criminal gang who would be able to use the registration system to find out that he had returned to Albania as he would be required to visit the local civil administration office in Durres as well as going to his new office in any address in Tirana.

22. The evidence, it is argued, shows that there are higher levels of violence and threat in urban areas. It is argued that the appellant is a particularly easy target for a criminal gang as he lacks any effective family support as he can only receive small amounts of money from his brother from the UK due to his brother's other financial commitments and his mother is extremely unwell and generally in a weak position in the home area so cannot provide any effective psychological or financial help. The appellant also has mental health problems, which are stigmatised in Albania, and has cognitive difficulties, and has the lowest level of education, just attending school up to 14 years. The country of origin evidence shows that there are high levels of unemployment in Tirana, making it unlikely the appellant would obtain employment in all of the circumstances. Ms Easty argued that the appellant would not make an application for money to make an assisted voluntary return as he was too afraid to go back to Albania.

23. Ms Easty argued that therefore the appellant could not find safety by relocating to Tirana as there was no sufficiency of protection against the criminal money lenders to whom his father owed money anywhere in Albania. As a result the appellant had a well founded fear of persecution based on his particular social group; was at Article 3 ECHR real risk of serious harm; and his return would be a disproportionate breach of his Article 8 ECHR right to private life because he would not be able to reintegrate and have a sufficient private life.

Conclusions – Remaking

24. As indicated at the appeal hearing I find that the appellant has given a true account of the attack on him and the threats that were made in January or February 2019 for the following reasons. He did not mention the attack in his initial screening interview/

unaccompanied child welfare interview but this was a short interview using an interpreter over the telephone, which even on the face of the record, involved two interpreters due to the telephone line breaking up in the middle of the question where he was asked why he left Albania. The interview took place in a ferry holding room at 10pm in the evening on the day of the appellant's arrival as a sixteen year old unaccompanied asylum seeker. From the point in time of his providing his first witness statement and full asylum interview he gave an account of his being attacked, knocked unconscious and threatened with death due to his father's debts to the criminal money lenders. In his asylum interview in 2020, prior to being refused asylum, the appellant also referred to another error in the initial interview (his brother was recorded as being called Adid not Adil and as being 17 years old not 27 years old). The appellant explained that this error was due it being noisy and there being difficulties communicating with the interpreter, and also gave this reason for the initial interview not recording his difficulties with the money lenders in Albania. I find this to be a convincing and plausible explanation for the appellant not providing these key details relating to his history of ill-treatment and fear of return to Albania in his initial screening interview/ unaccompanied child welfare interview, and note that generally caution must be exercised when relying upon initial screening interviews, due to the lack of protections provided in these interviews, as per YL (Rely on SEF) China [2004] UKAIT 00145.

25. Mr Wain raised the fact that the detail of the appellant having been hit by a man wearing brown knuckledusters was not contained in the original statement or given at his asylum interview as a further pointer that the appellant was not credible in his account. I find that this is not a matter which lessens the credibility of the account however. The appellant was not asked how he was attacked at his asylum interview. He was asked what happened when he was attacked. He explained he was punched in the head and knocked out for two minutes. I find that it was entirely reasonable that further details, including those relating to the knuckleduster, came out when he was interviewed about the attack by a doctor preparing a report on scarring and medical sequalae whose interest was focused on the detail of the attack.

26. I find that the fact that the appellant, his brother and mother have all provided witness evidence which is consistent regarding the key aspects of the account of the attack to be supportive of it having taken place, but note that the evidence of the appellant's mother was on in written form (albeit taken by the appellant's solicitor over the phone) and the evidence of his brother was simply what he had been told by his mother. So whilst I find that the witnesses who gave oral evidence are both to be seen as credible, the supporting witness evidence from the appellant's brother and mother is not the strongest.

27. However I find that the scarring report of Professor Roberts is highly supportive of the veracity of what the appellant says happened. Professor Roberts noted that the appellant gave prompt and consistent answers to the detailed questions he asked about the attack when he interviewed him. Professor Roberts find that the appellant has two skull deformities the first of which, Professor Roberts finds, applying the Istanbul Protocol terminology, is highly consistent with being punched on the right side of the skull with a knuckleduster. He comments that the loss of consciousness is highly consistent with concussion and such a brain injury, and that it would be very unlikely to be self-inflicted given the size and shape of the deformity, and that whilst it could have been an accidental injury with a hard object an isolated injury such as this (as there is no evidence of wider injury) would be unusual. The second injury is a bony deformity on the forehead with is highly consistent with a localised bleed within the bone caused by falling from standing onto a cement floor as described as having happened by the appellant following the blow to the head. This is again found by Professor Roberts as being unlikely to be self-inflicted but this second injury could, of course, have been from an accidental injury. Professor Roberts finds both injuries to be highly consistent with the severe assault the appellant states he was subjected to in 2019 when consideration is given to the recovery time since the attack.

28. Considering all of the evidence going to the attack on him which the appellant says took place January or February 2019 I am satisfied that the incident took place, and that it took place for the reasons he gives. I have preserved the findings of the First-tier Tribunal that such an attack by money lending criminals was itself plausible in the context of the country of origin materials. Further, I have preserved the findings that it was plausible that the money lending criminals would have attacked him and not his sisters; that they would have seen attacking him as a good way to try to get their money repaid by his father or potentially others in the family; and that the appellant would not have felt safe enough to have gone to the police for protection, which is consistent with the witness evidence before me that he did not even feel safe enough to go to hospital for treatment in case the men found him and attacked him again there.

29. The question that then arises is whether the appellant remains at risk of serious harm in his home area. I remind myself that as per paragraph 339K of the Immigration Rules that the fact that a person has already been subject to persecution or serious harm and direct threats of such harm is to be regarded as a serious indicator that he has a well founded fear of future persecution unless there are good reasons to consider that it would not be repeated.

30. Mr Wain made no direct submission that the appellant would be safe in his home area of Durres. I find that given the observations of the appellant's mother and neighbours in Durres that the criminal money lenders continue to be around that there continues to be a real risk of serious harm for the appellant in his home area. There would be no rational reason why they would not think that threatening and inflicting serious harm on the appellant might not produce some repayment of money they are owed, if not from the appellant's father then from his wider family who would be likely care about him and may be in a better state to hand over savings or borrow to pay them off.

31. The next key question in this appeal is whether the appellant could find safety by relocating to Tirana or another large city away from Durres, notwithstanding the fact that Albania is a small country, and thus whether this would be a move which would in all of the circumstances not be unduly harsh for the appellant, and then whether there is in fact sufficiency of protection in a city such as Tirana.

32. I find that it would not, issues of serious harm aside, be unreasonable to expect this appellant to move to Tirana. Whilst the psychological evidence of Dr Alice Rogers, which I accept, is, in short summary, that the appellant suffers from mild PTSD with elements of anxiety and depression which are reflective of a childhood with high levels of abuse and in addition has a borderline learning disability (low IQ), with a low working memory and poor verbal skills, I find that the appellant would be capable of living alone and away from his home area in Albania. It is notable that he does not live with his brother in the UK, and that his brother gave evidence that the appellant has basic home skills such as cooking and paying bills. The appellant has shown initiative in obtaining basic work in Albania in the past. Although he would not be able to earn well as a result of his lack of qualifications and low IQ I find that it is probable, notwithstanding high youth unemployment in Albania, he would be able to obtain some work given his history of two years working doing odd jobs and gardening and that his brother would, despite his other commitments, provide him with some limited support via financial remittances from the UK. I find that the appellant would be poor but that he would not be destitute. I find that he would not apply for a voluntary departure grant from the Home Office, and so would not have access to the £3000, because he is genuinely subjectively very afraid of returning to Albania based on the experience of persecution which I have found he has credibly put in his asylum claim. He would not in these circumstances be able to apply to voluntarily leave the UK as he is terrified of what will happen to him on return. Whilst there is prejudice against those with mental health problems in Albanian society there was no evidence before me that the appellant has florid outward

manifestations of mental health problems which would cause him problems in society and make his relocation unreasonable, and further he is currently not receiving any treatment of any kind for them in the UK. The evidence is, in any case, that there is potentially the treatment he needs in Tirana, and he would be able to access some psychological support from his mother and brother on the telephone.

33. They next question is whether the appellant would be safe in Tirana. Firstly I must consider the reach of the non-state agent criminal money lenders that he fears. The appellant has not been able to give any details of the identities of these people. It is the opinion of Dr Tahiraj, as expressed at pages 14 -15 of her report, that from examples from the press regarding violence from criminal money lenders, that the passage of time and even small size of any debt does not reduce the risk to a target if a debt remains unpaid. She also comments that debts outside the formal banking system often inflate massively when they are not paid and it comes to them being enforced. Dr Tahiraj points to the fact that if the criminal gang were to conclude that no family member was likely to repay them to the money due to threats or acts of violence on the appellant they might traffic him for exploitation instead to recover their loss. Dr Tahiraj comments that the type of criminality the appellant fears is extensive and organised in Albania, with probable links with the police and criminal justice system (see page 16 of the report), and that the chief of police had been fired in 2022 because the situation with organised crime was out of control. Dr Tahiraj cites a Eurojust report on Albania for 2020 in which of the 48 murders which were carried out in that year in Albania most of them were carried out in mafia style or with paid assassins. Against the background of this evidence I am satisfied to the lower civil standard of proof that the risk to the appellant from the criminal money lenders extends to Tirana or other Albanian towns.

34. The next issues to determine is whether the money lenders would be aware of the appellant’s return to Albania. Dr Tahiraj gives an account of how the appellant would have to register to move to Tirana at pages 53-54 of her report. I therefore have detailed expert evidence on the operation of this system. He would need to register at a civil office near his new residence to obtain health services, banking services and to be able to have valid identity papers. However to do this he would also have to visit the old local municipality office in person to submit the application for changing residence with a family certificate and the head of his family who in his case is his father. I find that this process will mean that relocation to Tirana carries a real risk that the criminal money lenders will become aware that the appellant has returned to Albania and of his relocation as firstly he must be physically present in a central area of Durres, albeit probably briefly, and

secondly because his father is unlikely to keep this information private due to his lack of control due to his addictions to alcohol and gambling. I realise that in BF it was found that there was limited evidence that an individual would be traced by operation of the registration system, however ultimately the issue was found to be one which turned on the evidence in each case. In this case the evidence, and in particular the lack of control the appellant's father will have over what he says given his addiction problems, means that I find that this process means that there is a real risk that the requirements of the civil registration system will lead to the appellant being traced to Tirana, or indeed any other city, by the criminal money lenders.

35. The final question in this appeal is whether the appellant will be able to access sufficiency of protection in Tirana from the police with respect to the threat of serious harm from the criminal money lenders. The latest country guidance on Albania, albeit in the context of the risk to openly gay men, as set out in the country guidance case of BF is that there is a generally effective system of protection. Ms Easty has observed that in BF the risk to the openly gay men was said to originated primarily from families, with questions as to whether the police would be committed to protect the LGBTI community, and that the context of this appeal is quite different with a risk to the appellant from organised criminals. The position in the 2012 country guidance case of EH is that there was no sufficiency of protection for victims of an active established blood feud in an area where Kanun law predominates, and particularly northern Albania, although otherwise it generally existed. This is again a different context, and the evidence in EH is over a decade old. I find that in accordance with the country guidance cases that whilst I should start from a proposition that there is a system of state protection in Albania which can be sufficient and effective I must look at the individualised circumstances of this appellant and the threat he faces from organised crime to conclude whether that system extends to providing sufficiency of protection to him in the particular circumstances of his case.

36. Dr Tahiraj's conclusions on sufficiency of protection, particularly at pages 51-52 of her report, are, I find, nuanced. She finds that an ability to access sufficiency of protection from the criminal justice system will depend on the circumstances in which an individual finds him or herself, with factors such as informal support networks and family, social and economic status, level of education and mental health being relevant. She concludes that the evidence of corruption in the police force would be likely to deter a person such as this appellant with vulnerabilities from seeking protection from the police. I find that the vulnerability of this appellant is significant and relevant factors can be identified as follows: he will be poor, ill-educated, with a low IQ, without a good network of

support from friends or family in Tirana and suffering from elements of anxiety and depression.

37. The evidence of Dr Tahiraj is further that the appellant is not likely to be provided with sufficiency of protection by the police given their problems of corruption, the variable standards of policing in Albania and their lack of capacity. Relying on the concluding remarks at page 79 of Dr Tahiraj's first report, and the material at page 36, I find that as a person without any public standing and with little social status this appellant could not expect to benefit from recourse to the law and would not be likely to be provided with sufficiency of protection in Albania today from the organised criminals who put him at real risk of serious harm. Dr Tahiraj looks at the conclusions in the latest Home Office CPIN on Albania in her updating report and maintains that the underlying evidence does not support a conclusion of universally available sufficiency of protection. Whilst measures such as police vetting have been introduced to attempt to improve things she points to the lack of evidence that justice has been improved and progress made, and identifies extensive evidence (for instance in recent reports of the US State Department on Albania and SPAK) that the problems of prevalent official corruption including links between the police, politics and organised crime continue along with problems coming from a lack of resources and concludes that there continues to be a poorly functioning criminal system.

38. I conclude, on the basis of all of the evidence before me, that for this appellant there is no sufficiency of protection in Albania even if he relocates to Tirana or another city. I therefore find that the appellant has a well founded fear of persecution in Albania by reason of his particular social group, and that for the same factual reasons return to Albania would place him at Article 3 ECHR real risk of serious harm and would be a disproportionate breach of his right to respect for private life as protected by Article 8 ECHR.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

2. I set aside the decision of the First-tier Tribunal

3. I remake the appeal by allowing it on asylum and human rights grounds.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper

Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of his protection claim.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

27th September 2023

Annex A: Error of Law Decision:

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Albania born in May 2002. He arrived in the UK on 18th March 2019. He claimed asylum on 12th April 2019. His claim was refused on 25th November 2019. His appeal against the decision was dismissed on asylum and human rights grounds by First-tier Tribunal Judge Row after a hearing on the 29th September 2022.

2. Permission to appeal was granted by Upper Tribunal Judge Jackson on 20th February 2023 on the basis that it was arguable that the First-tier judge had erred in law in failing to take into account material considerations. particularly the appellant's brother's evidence, but also the psychological evidence and expert evidence when assessing the credibility of the asylum claim. Permission was granted to argue all grounds.

3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if it had so erred whether the error was material and the decision should be set aside.

Submissions – Error of Law

4. In the grounds of appeal and in oral submissions from Ms Easty it is argued for the appellant, in summary, as follows.

5. Firstly, that the First-tier Tribunal failed to take into account when assessing the credibility of the appellant's claim that it had been found by the Judge that he was a vulnerable witness with low intellectual ability, anxiety and PTSD. In this context the First-tier Tribunal irrationally decided that a statement on a welfare form, completed when the appellant had not slept for two nights through a telephone interpreter he struggled to understand and with no read-back opportunities, that the appellant had come to the UK for a better life, meant that his asylum claim was a fabrication. It is argued that this fails to follow authority about the dangers of reliance on screening interviews as set out in YL (Rely on SEF) China [2004] UKAIT 00145 which states that such interviews are not done to establish the reasons why an appellant has come to the UK to claim asylum.

6. Secondly, it is argued, that the First-tier Tribunal wrongly did not accord weight to the psychological evidence of Miss Rogers and scarring report of Dr Roberts, inaccurately failing to consider that

properly it had been recorded by the psychologist that she did not conduct a fact finding exercise to establish if the facts behind the conditions were accurately stated by the appellant and failed to give weight to the scaring being typical of being caused in the way the appellant claimed that it was.

7. Thirdly, it is argued, that the First-tier Tribunal acted in a procedurally unfair fashion in refusing to give weight to the report of Dr Roberts because he had not considered the appellant's Albanian medical notes without putting the appellant on notice that this was no issue: as the appellant in fact received no treatment in Albania for his injuries these notes would not have been of assistance to Dr Roberts as they do not exist and the matter could have been dealt with at the hearing had it been raised as a concern by the First-tier Tribunal Judge.

8. Fourthly, it is argued, that the First-tier Tribunal made an error of law amounting to an error of fact in relation to the evidence of the appellant's brother whose statement gave clear reasons why he would not be at risk from those who posed a risk to the appellant because he had not lived in Albania since 2005 and was not associated with his father so the gang members did not know his family connection.

9. Fifthly, it is argued, that the First-tier Tribunal failed to properly engage with the expert evidence of Dr Tahiraj which entirely supported the appellant's claim in relation to domestic violence, tolerance to violence, child labour, unpaid debts and lack of access to mental health services as being plausible and consistent with the country of origin evidence, and his claim to have a real risk of serious harm as well as his claim that he would have very significant obstacles to integration if returned to Albania

10. An email was received from the respondent stating that a Rule 24 would not be formally filed in this appeal but that the appeal was opposed. Ms Everett accepted that the First-tier Tribunal had found the appellant's history to be plausible. She said that the fourth ground in relation to the evidence of the brother was the strongest in her estimation, and if it was found that material evidence had been misunderstood and not correctly factored into the credibility assessment then she accepted that the appeal would have to be remade, even if other elements were not flawed, as all the evidence going to credibility needed to be assessed in the round.

11. At the end of the hearing I informed the parties that I found that the First-tier Tribunal had erred materially in law but would set my detailed reasoning out in writing. It was agreed that the plausibility findings at paragraphs 46 to 54 of the decision could be preserved as there was no challenge to these. The credibility of the appellant's claim would however need to be remade, and so all

other findings were set aside. The remaking hearing will be done in the Upper Tribunal as the extent of remaking was not so great. There was no Albanian interpreter present in Field House so the remaking was adjourned to another day.

Conclusions – Error of Law

12. I find that the summary of the evidence of the appellant's brother at paragraphs 39 to 42 of the decision of the First-tier Tribunal is incomplete and factually inaccurate through no fault of the appellant. The appellant's brother does not say in his evidence that he was afraid for his own safety from the men who threatened the appellant when he returned to Albania, in fact quite the opposite, and the First-tier Tribunal does not include his explanation as to why he, and his wife and children, were not at risk from those to whom their father owes money. I find that as a result the reasoning in the conclusions on the asylum claim at paragraph 70 of the decision is based on a factually incorrect summary of evidence, and errs in law.

13. I also find that the First-tier Tribunal failed to consider authorities about the dangers of reliance on screening interviews, for instance YL (Rely on SEF) China [2004] UKAIT 00145, which states that such interviews are not done to establish the detailed reasons why an appellant has come to the UK to claim asylum, and that such arguments must be all the stronger with an appellant who claims asylum as a minor who is being interviewed after not having slept properly for two nights with a telephone interpreter, the first of whom had to be replaced. Whilst the appellant being a minor was considered by the First-tier Tribunal the general reasons for caution when treating answers given in screening interviews such as the welfare interview were not noted, and I find failure to make a direction on this point amounted to an error of law as this was a material consideration going to the weight of this evidence and was particularly important given the information in the welfare interview record was central to the finding that the appellant was not a credible witness.

14. At paragraphs 36 and 37 there is a summary of the report of Dr Roberts which overstates the scaring to be highly consistent rather than typical but which is otherwise accurate, but at paragraph 38 of the decision the issue of Dr Roberts not having the Albanian medical notes is raised as a "significant omission". I find that this is a concerning finding as it would not be routine for a UK doctor to review foreign medical notes and there was no reason to think the appellant had received medical assistance for his injuries at the hands of those to whom his father owed money. I find that to this extent the First-tier Tribunal erred in the treatment of the medical

evidence, and that this appears to have unlawfully led to less weight being attributed to the report as it is said at paragraph 71 of the decision that it has been found that the evidence is "unreliable in other ways". I also find that there was a failure to engage with the specific expert report of Dr Tahiraj. The report is not mentioned by name at any point: it is simply said at paragraph 28 that the appellant relies upon a country expert report, and after that point it is not referred to at all.

15. With respect to the credibility of the appellant a number of matters are found to be in favour of the appellant at paragraphs 46 to 54 of the decision including that the appellant had made a timely claim for asylum, had attempted to substantiate his claim, his claim (including that it may be customary for sons to be threatened if a father owed money, that the appellant's brother may have refused to pay off those to whom his father owed money as he may not have wished to do so, and that the appellant had no trust in the Albanian police to assist him) is in keeping with country of origin materials and was, in that sense, plausible. These findings are preserved as noted at paragraph 11 above.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

2. I set aside the decision of the First-tier Tribunal

3. I adjourn the re-making of the appeal.

Directions:

1. Any further evidence which either party wishes to reply upon for the remaking hearing must be filed with the Upper Tribunal and served on the other party ten days prior to the remaking hearing date.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of his protection claim.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

25th April 2023