



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-005006  
(PA/50876/2022)  
(IA/02596/2022)

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 6 February 2025**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE  
DEPUTY UPPER TRIBUNAL JUDGE SINGER**

**Between**

**DP (Albania)**

Appellant

**AND**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Wilford, Counsel instructed by KBP Law  
For the Respondent: Mr Whitwell, Senior Home Office Presenting Officer

**Heard at Field House on 6 January 2025**

**Anonymity**

**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, any of his witnesses 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**

**DECISION AND REASONS**

1. permission against the decision of the First-tier Tribunal (Judge Khosla) dated 17 February 2022.

The Ap

### **Background and Matters in Issue**

2. 2018. On 12 September 2018 he made a claim for protection. The basis of his claim was that in March 2017 he was kidnapped by two men near his home in Albania. He was then aged 14. These men held him captive in a house and forced him to cultivate cannabis. The men beat him and shouted at him; he was not paid for his work was not permitted to leave. After two weeks he managed to escape. He returned home. His parents remained concerned about his welfare, and although he had no further problems they decided to arrange his departure from Albania. He left the country on 1 August 2018.

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3. it to be reasonably likely that the two men would have any ongoing interest in the Appellant. If the Appellant remained concerned for his safety in Albania, it was open to him to seek the protection of the Albanian state, and or internally relocate to avoid any problems.

Protect

4. pending, the Appellant's case was referred to the Competent Authority for a determination as to whether he was a victim of trafficking. The reasonable grounds decision was made by 17 December 2019, and on 27 January 2021 a decision was made that there were conclusive grounds for believing that the appellant was in fact a victim of trafficking.

The Ap

5. was granted limited 'discretionary' leave to remain on the 20 May 2023.

It was,

6. his decision whether he was made aware that the Appellant had been granted DL. Certainly there is no reference to it on the face of the decision, which simply notes in its paragraph 4 that the Respondent had found that the Appellant did not qualify for leave on any grounds.

The ap

7. that there was any current risk of harm to the Appellant in Albania. The claimed risk did not in any event engage the Refugee Convention. He was satisfied that there would be a sufficiency of protection and/or that the Appellant would be able to internally relocate if he had concerns in his home area.

Judge K

8. granted, on limited grounds, by First-tier Tribunal Judge Seelhoff on 15 November 2023.

The Ap

9. preliminary issue raised by counsel for the Appellant at the outset of the hearing before us.

Before

**Preliminary issue: statutory abandonment**

10. 20 May 2023. Although both of the parties that appeared before it must have been aware of this fact, nobody seems to have brought it to the attention of the First-tier Tribunal. As we h
11. an appeal against refusal of protection is deemed to have been abandoned upon a grant of discretionary leave being made. Section 104(4B) of the Act requires the appellant faced with this situation to notify the First-tier Tribunal of an intention to pursue an appeal on protection grounds: this preserves the Appellant's right to pursue what is colloquially known as an 'upgrade appeal'. Pursua
12. from the Appellant's solicitors to the Tribunal, such notification was not given in the Appellant's case. KBP Law LLP explain that the fee earner with conduct of the Appellant's case was not aware of the requirement to lodge this notice; it was never therefore done. The effect of this omission is that all of the proceedings thus far are a nullity. Without the section 104(4B) notice, there has never been any jurisdiction to proceed with this appeal, which is deemed by s104 (4A) to have been abandoned. For rea
13. acknowledged the error on the part of those instructing him, Mr Wilford urged us to exercise our discretion to retrospectively accept notification, thus saving the decisions of Judge Khosla and Judge Seelhoff below, and preserving the present proceedings in the Upper Tribunal. As authority for our power to do this, Mr Wilford relied on the decision in MSU (s.104 (4B) notices) Bangladesh [2019] UKUT 412 (IAC). In MSU, Mr Justice Lane and Mr CMG Ockelton, then respectively the President and Vice President of the Upper Tribunal, held that where notice is, as here, given late it has the effect of retrospectively causing the appeal to have been pending throughout, and validates any act by either Tribunal that was done without jurisdiction at the time that it was done. Whilst the Upper Tribunal has no power to extend time to accept late service of a notice, the First-tier Tribunal procedure rules contain a wide-ranging general power which can in the circumstances be used to extend time. Mr Wilf
14. extend time. He stressed that the delay here was substantial - some 16 months. The default is clearly not trivial. He further stressed that the fault for it lies squarely with the Appellant's representatives, who should plainly have been aware of their obligations when pursuing an upgrade appeal. Having regard to all of the circumstances of the case, Mr Whitwell accepted that an outcome of nullity would be unfortunate in this long-running protection and trafficking case, but submitted that there would be no prejudice to the Appellant who could make further submissions if he wished to do so. For the
15. appropriate to reconstitute our self as a First-tier Tribunal for the purpose of determining this preliminary issue. We then considered, and applied, the well- Having

known principles pertaining to extending time: see for instance Hysaj v SSHD [2014] EWCA Civ 1633. This was a serious default, and we recognise that permitting such extensive delays can pose a risk to the proper administration of justice. The fault lies primarily with the Appellant's representatives, who in fairness have accepted as much. Both of these matters weigh against time being extended. We must however have regard to all of the relevant circumstances. The Secretary of State was also a party to the appeal before the First-tier Tribunal and her representative must have been aware, or ought to have been aware, of the grant of discretionary leave, at the date that he appeared before Judge Khosla. It is unfortunate to say the least that both parties appeared to proceed on the basis that there was a live human rights appeal in play, without considering whether the grant of DL had any impact on that. We further recognise the uncontested facts that the Appellant is still very young; he is a victim of trafficking who continues to suffer the consequences of this by way of poor mental health. The consequences for him of all of the foregoing proceedings being a nullity are extreme. He has relived no doubt difficult and upsetting life events, and has gone through the stress of discussing them in court. Whether or not his fear is ultimately accepted to be well-founded, we do not doubt that for him it is real. If we do not accede to Mr Wilford's request, the Appellant will be back at the beginning. His solicitors would be entitled, indeed in the circumstances obliged, to make further representations on his behalf, which would in turn stand a good prospect of being recognised as a fresh claim. Assuming the Respondent maintains her position, the Appellant would find himself back at the beginning of the very process that we are today on the verge of concluding. We cannot think that the administration of justice demands such an outcome. We therefore extend time, admit the section 104(4B) notice, and retrospectively cause the present appeal to have been pending throughout.

### **The Grounds**

16. original four grounds. For the purpose of considering them we are constituted as a panel of the Upper Tribunal. As we h
17. had the benefit of an expert country report on Albania prepared by Mr Stephen Harvey. Mr Harvey concluded, *inter alia*, that the Appellant's account was wholly consistent with the general human trafficking narrative in Albania, the Appellant would remain of interest to the men who trafficked him, that it would not be safe for him to return to his home area, that there remained a risk of him being re-trafficked, and that he would not receive a sufficiency of protection from the Albanian authorities. Whilst the judge accepted the account to be generally credible, he did not concur with Mr Harvey's assessment of risk. That is not, of course, in error. The assessment of risk is a matter for the judge, and expert opinion, no matter how well-informed or eminent, will only form one part of that evaluation. The difficulty, says the application for permission to appeal, is that it is not apparent from the decision that Mr Harvey's evidence did play a part in the judge's deliberations. The Grounds state that the determination discloses "no consideration" of the expert evidence, and that had the report been taken into account, it is arguable that the Tribunal would have drawn different conclusions in all key areas. The fir

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square with the decision itself. The grounds assert that the decision discloses “no consideration” of Mr Harvey’s evidence, and this statement is adopted by the judge who granted permission, but it is simply not correct. As Mr Wilford properly recognised in his oral submissions, the decision in fact refers expressly to Mr Harvey’s report: at §41, §42, §61 and §62. In those latter paragraphs, for instance, the Tribunal addresses Mr Harvey’s concern that the Appellant may be targeted by his former captors if they perceive a risk that he will turn informant, dismissing it as speculative in circumstances where the crime took place as long ago as 2017.

The first

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aspect of risk highlighted by Mr Harvey: the risk that the Appellant would be at risk of exploitation by a different criminal gang. At its paragraph 66 the First-tier Tribunal records that “it was no part of the Appellant’s case that there remained a general risk to him of being re-trafficked simply by being an Albanian man”. Mr Wilford takes issue with that: he submits that it clearly was part of the Appellant’s case that he faced a general risk of re-trafficking, and refers us to the relevant parts of the Appellant’s Skeleton Argument before the First-tier Tribunal. He had relied expressly on Mr Harvey’s assessment that this risk particularly pertained to the vulnerable, including those who faced stigma as former victims of trafficking.

Mr Wilf

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is because having made the statement that it does at paragraph 66 it goes on to expressly address the “fall-back” of a “risk on account of his particular vulnerabilities including his mental health”. The decision then goes on to consider in some detail the evidence relating to the extent of the Appellant’s mental health issues, his education and development in the years since he was first trafficked, and the position of his family in Albania: all matters directly relevant to the extent of his future vulnerability to trafficking. The Tribunal’s conclusions on the facts were that although the Appellant does have some issues with his mental health he would have no difficulty reintegrating into Albanian society; he is plainly able to make and sustain social relationships and would benefit from the support of his family, who are of sufficient means to have sent his sister to university in Tirana. Since he has been in the United Kingdom he has learnt some English, something which would stand him in good stead in Albania’s tourism industry. He has had treatment to correct his limp. In respect of that latter point, it is relevant to note that when the Appellant stumbled upon the cannabis production site back in 2017 his kidnappers saw a young, disabled farm boy. That is not who they would see today. As to stigma, the grounds make extensive reference to Mr Harvey’s evidence that victims of trafficking, both male and female, are subject to stigma in Albanian society; the case is put that such stigma leaves these survivors isolated, which in turn makes them more susceptible to trafficking. In fact, as the judge correctly notes, those passages relate to male victims of trafficking for the purpose of sexual exploitation. There is no evidence that the Appellant, who was held captive for 2 weeks and forced to grow cannabis, would find himself subject to any societal hostility, fear or ostracisation. It was the Appellant’s case that he faced a real risk of trafficking, not as an ‘Albanian man’, but as an Albanian man with particular vulnerabilities. We are satisfied that the Tribunal engaged with that case, including the expert evidence, and that it was rationally entitled to reject it for the reasons that it gives.

We do

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the Tribunal’s analysis of whether the Appellant was part of a particular social

It follow

group. It rejected the contention that he could be, on the grounds that male victims of trafficking are not 'socially visible' in Albania in the same way that female victims are. For the reasons explained in EMAP (gang violence – Convention reason) El Salvador CG [2022] UKUT 00335 [at 90-111], this was an error in this pre-NABA 2022 appeal. The test for membership of a particular social group is disjunctive, and does not require the group to have 'social visibility'. All that is required is that the members share an innate characteristic, which here was advanced to be having survived trafficking. Mr Whitwell for the Secretary of State accepted this to be so, but rightly submitted that it is not an error such that the decision should be set aside in circumstances where there is an undisturbed finding that the Appellant does not face a risk on return.

### **Decisions**

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trafficking.

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Upper Tribunal Judge Bruce  
Immigration and Asylum Chamber  
20<sup>th</sup> January 2025