AA 09566 2013

Upper Tribunal
(Immigration and Asylum Chamber)

THE IMMIGRATION ACTS

Heard at Field House	**Determination Sent:**
On 20 June 2013	**On 30 June 2014**

Before

UPPER TRIBUNAL JUDGE WARR

Between

BC (A MINOR)
ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE

Respondent

Representation:

For the Appellant: Mr C Howells, of counsel, instructed by Crowley & Co
For the Respondent: Ms A Everett, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Albania born on 7th October 1997. He arrived in this country on 28 October, 2012 and applied for asylum on 31 October, 2012. This application was refused on 2 October, 2013. The

appellant appealed and the appeal came before a First-tier Judge on 10 January, 2014. The appellant was represented then as he is now by Mr Howells. The appellant was accompanied by his brother-in-law.

2. The appellant had been living with his brother-in-law for the previous 12 months. The appellant also has a sister in the United Kingdom on a spouse visa.

3. The judge did not find the appellant credible in relation to his asylum claim. He was not at risk on return to Albania. The judge also did not accept that the appellant continued to have little or no contact with his family in Albania. While it was claimed that the family home did not have a telephone, the appellant's sister had spoken to their mother after the birth of her baby and there was nothing to suggest that the family had moved from their home. The judge makes this point in both paragraph 18 and 21 of the determination. Similarly the appellant's brother-in-law had visited Albania whilst the appellant had been in the United Kingdom and he appeared not to have encountered problems. In paragraph 22 the judge stated:

> "Even if there is no telephone at home, I find that the appellant's parents would make every effort to contact their only son in the UK on a regular basis. I find that the appellant is in regular contact with his parents in Albania."

4. I have not summarised the full details of the asylum claim since they are not relevant as the appeal is not pursued on asylum grounds. The sole ground taken in this case is in relation to the respondent's duties under paragraph 352ZC of the immigration rules. Under subparagraph (c) it is a requirement to be met in order for a grant of limited leave to remain to be made in relation to an unaccompanied asylum seeking child that: "there are no adequate reception arrangements in the country to which they would be returned if leave to remain was not granted".

5. In paragraph 28 of the determination the judge said this:

> There is no evidence before me that the respondent has conducted an assessment as to reception facilities in Albania for this appellant. He is still 16 years old and it is incumbent upon the respondent to ensure that there are adequate reception facilities for the appellant before he can be removed."

6. The judge found that the appellant had been sent to the UK with the telephone number for his brother-in-law with a story to claim asylum.

7. In paragraph 32, in considering the appellant's claim under Article 8, the judge found that the appellant's parents were able and willing to care for him in Albania. In paragraph 33 the judge said:

> "I have had regard to the best interests of the appellant as a child being removed to Albania. I find that the appellant will be returning to his parents in Albania. The best interests of the appellant are to be with his parents."

8. The judge dismissed the appeal on asylum, humanitarian protection and human rights grounds but in paragraph 39 added this:

> "The respondent is to ensure that there are adequate reception facilities for the removal of the appellant."

9. Permission to appeal was refused by the First-tier Tribunal but Upper Tribunal Judge Macleman granted permission as the appeal under the immigration rules did not appear to be either allowed or dismissed. The conclusions of the judge might require some tidying up.

10. Mr Howells relied on his grounds of appeal and submitted the appeal should be allowed under the immigration rules and paragraph 39 of the determination should be amended to reflect that.

11. He referred to DS (Afghanistan) v Secretary of State [2011] EWCA Civ 305. This made it clear the burden of proof was on the respondent to make the necessary enquiries. There was a policy not to remove an unaccompanied child unless the Secretary of State was satisfied that safe and adequate reception arrangements are in place in the country to which the appellant is to be removed. The policy was now crystallised in the rules.

12. Ms Everett pointed out that the respondent had considered the issue in paragraph 74 of the refusal letter:

> "…You have stated that your brother in law is in regular contact with his wife, your sister, in Albania and that you have also spoken to your father since being in the UK. It is considered that adequate reception arrangements could be arranged with your sister to collect you, and as your brother in law has made the journey back to Albania it is considered that he could accompany you to ensure that you meet your family members safely…"

13. The same confidence about the reception arrangements in reflected in paragraph 71.

14. Ms Everett acknowledged that the respondent had not challenged the judge's conclusion by way of an appeal. Further, and more embarrassingly, in the response that had been filed, the Secretary of State had argued that the judge had directed himself *correctly*.

15. I should emphasise that this is not a decision that every judge might have reached. However, the finding in paragraph 28 is crystal clear and the conclusion in paragraph 39 is equally clear. Surprising though it

might seem, the judge took the view the respondent had not properly assessed the reception conditions.

16. As the respondent has not appealed the decision and, on the contrary submitted that the judge had directed himself correctly, I have come to the conclusion that the "tidying up" referred to by Upper Tribunal Judge Macleman requires the addition of the words: "The appeal is allowed under paragraph 352ZC(c)."

17. The determination contains a material error of law for the reasons given by Judge Macleman.

18. The appeal is re-made accordingly:

19. The appeal is dismissed on asylum, humanitarian protection and human rights grounds.

20. The respondent is to ensure that there are adequate reception facilities for the removal of the appellant. The appeal is allowed under paragraph 352ZC(c).

Signed

Upper Tribunal Judge Warr

24 June 2014