



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal no: PA/03000/2016

THE IMMIGRATION ACTS

At **Field House**
On **20 June 2017**

Decision & Reasons Promulgated
On 21 June 2017

Before:

Upper Tribunal Judge
John FREEMAN

Between:

Kledis KURTAJ

appellant

and

Secretary of State for the Home Department

respondent

Representation:

For the appellant: *James Collins* (counsel instructed by Sentinel)

For the respondent: Mr Sebastian Kandola

DECISION AND REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Shazadi Beg), sitting at Taylor House on 2 March, to dismiss an asylum and human rights appeal by a citizen of Albania, born 4 August 1998.

2. The appellant had given a history of his father, a police officer, having had to leave the force, owing to threats by drug gangs, members of which he had arrested. In April 2015 he had received threats from some who had by then been released from prison, and in May the appellant himself was kidnapped, and taken to a warehouse where he was tied up and threatened with death; but he managed to escape, and stayed with a friend of his father's, while his father made arrangements for him to leave Albania.
3. On the appellant's way here, he said he was forced by drug smugglers to work for them. He got here on 23 August 2015, and claimed asylum on the 24th. Because of what he had said about the smugglers, he was referred to the NRM [National Referral Mechanism] for

*NOTE: (1) no anonymity direction made at first instance will continue, unless extended by me.
(2) persons under 18 are referred to by initials, and must not be further identified.*

dealing with trafficking cases. The NRM process resulted in a positive reasonable grounds decision on 13 November; but a negative conclusive grounds decision on 23 February 2016.

4. The judge took great care in setting out the appellant's history, and in dealing with all the points raised. She had the great advantage of an independent report under the RALON¹ process, containing evidence obtained by the British Embassy in Tirana, which she found contradicted what the appellant had said. In particular, as Mr Collins pointed out, records showed his father had had to leave the police in 2009 owing to his inability to pass out of training school. She noted Mr Collins's correct submission that the NRM reaches decisions on the balance of probabilities; but that it was for her to decide this case on the appropriate lower standard of proof.
5. Grounds of appeal, not by Mr Collins, eventually resulted in a grant of permission by the Upper Tribunal, on the basis that the judge had failed to take into account that the appellant was a child when he left Albania, and was travelling through Europe, and had applied a much higher standard of proof than the correct one to the question of whether he had been trafficked in France.
6. This appellant was just over 16½ at the time of the events on which his claim relies, and 18½ by the date of the first-tier hearing. Just as there is no 'bright line' excluding any allowances for someone only just over 18, so there is no rigid lower standard to be applied to the evidence of someone not much under that age. As Mr Collins realistically accepted, there is no requirement for judges to set out any kind of mantra in these cases.
7. What judges do need to do is show that they have considered the facts with care, which this judge did, and not make any assumptions which are unfair in the case of a young person of the age in question. I invited Mr Collins to draw my attention to any specific examples of unfairness of this kind, but he frankly said he was unable to do so, or to point to any instance of the judge not applying the correct standard of proof she had set herself.
8. It is a very good thing that there is now an independent fact-finding procedure in cases of this kind: the judge carefully weighed up the evidence obtained through it with that presented to her, and gave her own considered independent view of the case as a whole. There is nothing in any way wrong with her decision or the way she reached it.

Appeal dismissed



(a judge of the Upper Tribunal)
20.06.2017

¹ acronym unknown