Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/03738/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 6 April 2018	**On 11 April 2018**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

PA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Lewis - Direct Access.
For the Respondent: Mr E Tufan Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge Khawar promulgated on 17 May 2017 in which the Judge dismissed the appellant's protection and human rights claim.

Background

2. The appellant, a citizen of Albania, was born on 28 January 1998. At the date of the hearing before the First-tier Tribunal he was 19 years of age.

3. The appellant claimed to have left Albania on 10 January 2014 with the assistance of an agent and to have arrived in the United Kingdom on 17 January 2014. The applicant claimed asylum on arrival although his claim was refused in the refusal letter dated 7 November 2014. The applicant was granted Discretionary Leave as an Unaccompanied Asylum-Seeking Child from 7 November 2014 to 28 July 2015. On 24 July 2015 the appellant made a further application which was refused by the respondent on 22 March 2016, which is the decision under appeal.
4. The Judge considered the appellant's case together with the evidence provided in support thereof before setting out findings of fact at [27 – 53] of the decision under challenge which can, inter alia, be summarised in the following terms:

    a. The appellant did not appeal against the original refusal of his asylum claim dated 7 November 2014 complaining in his witness statement of 21 July 2015 inadequate/poor representation and difficulties in relation to the interpreter arose, although no such issues were raised in the appeal either in the appellants evidence or submissions made by his representative and there was no formal complaint to the Law Society in relation to inadequate/poor representation [28 – 29].
    b. The appellant's representative did not address the Judge on the substantive basis of the respondent's reasons for refusal; in particular the Judge was not addressed on the principal reasons for refusal of the Asylum/Articles 2 and 3, humanitarian protection, issues of adequacy/sufficiency protection and reasonable internal relocation available to the appellant on return to Albania and was not addressed in relation to potential Article 3 medical grounds. No challenge was raised in relation to the adequacy of medical psychiatric treatment being available in Albania and the appellant served no objective evidence to challenge the analysis of the Secretary State in paragraphs [86 – 106] of the current reasons for refusal letter particularly those relating to the risk of suicide and availability of adequate medical treatment for mental health problems [30].
    c. The Judge was only addressed on article 8 private life in which the psychiatric report of Dr Dhumad was prayed in aid to establish the appellant has a genuine subjective fear of risk on return from his father and is at risk of suicide [31].
    d. The Judge notes the conclusion of the medical report set out by the author at paragraph 16.5 [33 – 34].
    e. The Judge noted in the reference in the report to a Sri Lankan appellant and finds the obligation of the doctor was to provide a subjective assessment of the appellant. The Judge did not know to what extent the sentiments expressed genuinely applied to the appellant rather than some other individual, warranting only limited evidential weight being attached to that evidence [35].

f. In any event, the Judge notes that at no point during the proceedings has the respondent sought to challenge the appellants claim to have been violently and sexually abused by his father since approximately age of fourteen for a period of approximately two years before he left Albania in January 2014. The Judge notes the appellant has not been doubted in relation to his factual claims by other experts including a Child Psychologist who indicated the appellant received ten sessions of counselling or from the appellants GP [36].
g. The Judge notes there is no evidence to challenge the respondent's objective evidence set out at [91] of the refusal letter in relation to adequacy of the psychiatric care facilities available in Albania; leading to it being found "therefore although the Appellant has (as detailed in Dr Dhumad's Report) a genuine subjective fear of potentially being killed by his father upon return to Albania, such fear is not objectively well-founded due to the availability of adequacy protection and/reasonable internal relocation and the availability of adequate medical treatment" [37].
h. In considering article 8 ECHR, the Judge finds there was no reliable evidence to establish that the appellant is gay for the reasons set out at [44 -45].
i. The Judge finds that the question of whether the appellant is gay is arguably academic as there is no evidence that the appellant would suffer article 3 ill treatment/persecution upon return simply by virtue of the fact that he may be gay. The Judge accepts there is evidence to establish discrimination against gay individuals within the community in Albania but no evidence to suggest that such discrimination crosses the article 3 threshold [46].
j. The Judge did not find the appellant is in any relationship with a partner and has not established family life in the United Kingdom giving rise to a finding there is no article 8 protected family life [48].
k. The Judge accepts the appellant has a private life in the United Kingdom and on that basis, that article 8 is engaged. The Judge accepts that the appellant has undertaken a role within the UK and as such, and to a limited degree that the appellant has contributed to society [49-51].
l. The Judge reminds himself of the five-stage process set out by the House of Lords in Razgar and in relation to the fifth question, that of the proportionality of the decision, finds at [52] "as to the final question, that of proportionality, I rule in favour of the Respondent. I have heard no evidence to suggest that the type of private life established by the Appellant in the United Kingdom, could not reasonably be developed upon return to Albania. In my judgment there will be nothing to prevent the Appellant from volunteering his services to some charitable organisations involving children in Albania upon return - in the manner that he has undertaken

over the past year or so, in his involvement with the above football team in the UK".

m. The appeal fails under article 8 ECHR [53].

5. The appellant sought permission to appeal which was initially refused by another judge of the First-tier Tribunal but granted on a renewed application to the Upper Tribunal on the following grounds:

> "It is arguable that the judge failed to address fully a ground of appeal namely, Article 3 and the risk of suicide on return to Albania where is accepted that the appellant had been sexually and physically abused by his father. Article 3 is clearly pleaded in the skeleton argument [2] (reliance on previous representative's submissions). It is arguable that any assessment under Article 3 should consider the subjective fear of the applicant. Further, it is arguable relevant evidence was not taken into account for example the psychiatric condition was relevant to assessment under Article 8. It is arguable the reasoning in respect of the appellant's assertion he is gay is insufficient."

Error of law

1. In relation to the finding on the appellant's sexually orientation, the Judge does not find that the appellant is not gay, as he claims, but finds there was no reliable evidence to establish this claim, even to the lower standard. It is a finding that the appellant had not discharged the burden of proof upon him to the required standard to prove what he was claiming is true. The Judge does not specifically reject the claim and gives reasons for why it was found the burden had not been discharged.
2. It is also important to consider the finding at [46] that not only has the appellant not discharged the burden of proof to establish he is gay, this is a question that is also somewhat academic because there was no evidence that the appellant would suffer article 3 ill treatment/persecution on return to Albania solely by virtue of the fact that he may be gay.
3. The current country guidance relating to this issue is that of *IM (Risk – Objective Evidence – Homosexuals) Albania CG [2003] UKIAT 00067* in which the Tribunal said that homosexuals caught *in flagrante delicto* are not at risk in Albania.
4. The appellant provided no evidence of any legal limitation for gay people in Albania although it is accepted that those who are open about their LGBT sexual orientation may face job loss, discrimination, threats and hate speech. It was not made out before the Judge that any such experiences are sufficient to cross the threshold of persecution. On this issue, therefore, no arguable legal error material to the decision to dismiss the appeal on protection grounds is made out.
5. In relation to article 8 ECHR, there is no challenge to the Judge's finding the appellant does not have family life engaged by Article 8. I also find that the private life elements considered by the Judge did not disclose arguable legal error in themselves. Although it is accepted the appellant has made some contribution to society, in *Nasim and others (Article 8) [2014] UKUT 25 (IAC)* it was held that the judgment

of the Supreme Court in *Patel and Others v Secretary of State for the Home Department [2013] UKSC 72* served to re-focus attention on the nature and purpose of article 8 of the ECHR and, in particular, to recognise that Article's limited utility in private life cases that are far removed from the protection of an individual's moral and physical integrity. Earlier cases need to be read with that in mind.

6. Other cases on this issue include *Hamat (Article 9 – freedom of religion) [2016] UKUT 00286* in which it was held that matters relied on by way of a positive contribution to the community are capable in principle of affecting the weight to be given to the maintenance of effective immigration control and should not be excluded from consideration altogether but are unlikely in practice to carry much weight. In *Lama (video recorded evidence -weight - Art 8 ECHR) [2017] UKUT 16 (IAC)* it was held that a person's value to the community is a factor which may legitimately be considered in the Article 8 proportionality balancing exercise. In *UE (Nigeria) and others v Secretary of State for the Home Department [2010] EWCA Civ 975* the Court of Appeal said that the issue of community value was part of a wider issue concerning the proper legal approach to proportionality under the ECHR. This was not confined to solely Article 8 issues. The courts had favoured a broad, rather than restrictive, approach to the issue when determining whether a fair balance was struck between the interest of the community and the protection of an individual's human rights. A public interest in the retention in the UK of someone who was of considerable value to the community could properly be seen as relevant to the exercise of immigration control. The weight to be attached to the public interest in removal of the person in question was not some fixed immutable amount but might vary from case to case. This did not mean that the individual was being rewarded for good behaviour. It went instead to the strength of public interest in his removal and how much weight should be attached to the need to maintain effective immigration control in his particular case. Contribution to the community was not considered 'freestanding' as such; it was an element in the assessment in the public interest of maintaining effective immigration control. Contribution to the community could affect the balance only in so far as it was relevant to the legitimate aim of immigration control or the private life claim of the applicant. It was open to the court to find that the loss of a significant positive contribution to the community could affect the issue of public interest in the proportionality test under Article 8. It would be unusual, however, for the loss of the benefit to the community to tip the scales in a claimant's favour. This constituted a specific and targeted exercise and would be based on the detailed facts of the individual case and the extent to which there was interference with the claimant's private and/or family life. Giving the leading judgment, Sir David Keene observed that the question of a person's value to the community, a value of which the community would be deprived if he were to be removed, is a different question from asking what would be the impact upon the individual of removing him. Sir David Keene also said that although the "factor of public value can be relevant ... I would expect it to make a difference to the

outcome of immigration cases only in a relatively few instances where the positive contribution to this country is very significant". Lord Justice Richards was rather more lukewarm in his concurring judgment, accepting that contributions to the community are capable in principle of affecting the weight to be given to the maintenance of effective immigration control, but doubting whether they would in practice carry a lot of weight.

7. No arguable error is made out in the manner in which the Judge considered the contribution made by the appellant which was clearly factored into the proportionality assessment.

8. The Judge also took into account Section 117B(5) which specifically states that little weight should be given to a private life established by a person at a time when the person's immigration status is precarious. The weight to be given to the evidence was a matter for the Judge who clearly considered the material with the required degree of anxious scrutiny and has given adequately reasoned findings in relation to this issue. No arguable legal error is made out.

9. The main thrust of Mr Lewis' submissions refer to articles 3 and 8 ECHR in relation to the appellant's psychiatric presentation and risk of suicide. It was submitted the medical report found the appellant to be at risk of suicide due to his subjective fear. The Judge refers to the relevant section of the psychiatric report where he writes at [34]:

> "Risk assessment: the risk of suicide in my opinion is currently moderate; the main risk factors in his condition or severe depression, PTSD and hopelessness and shame due to rape; he also has a history of multiple suicide attempts. He told me that he has ongoing thoughts of ending his life due to fear of removal. He told me that he is frightened; he believes that he would be killed if returned to Sri Lanka [???]. Severe depression, hopelessness, shame and PTSD symptoms increase the risk of suicide in the context of removal to Hopeless Albania has a serious and significant association with suicide risk. The risk will be greater when he feels the deportation is close, and any threat of removal, in my opinion will trigger a severe deterioration in his mental suffering and subsequently increases the risk of suicide."

10. In *J v SSHD [2005] EWCA Civ 629* the Court of Appeal set out the test in Article 3 cases as follows. (i) the feared ill treatment must be of a minimum level of severity; (ii) a causal link must be shown between the act of removal and the inhuman treatment relied on; (iii) in a foreign case the Article 3 threshold will be particularly high. (For thresholds see above) (iv) in principle it was possible for an Article 3 case to succeed on the basis of a risk of suicide and (v) in a foreign case of suicide risk it would be relevant to consider whether the fear of ill treatment in the receiving state was objectively well founded; if not, this would weigh against there being a real risk of there being a breach; and (vi) it would also be relevant to consider whether the removing and/or the receiving state had effective mechanisms to reduce the risk; if there were, this would also weigh against there being a real risk of a breach. The Court of Appeal went on to say that the Tribunal was correct to consider separately the risk of treatment contrary to Article 3 in the UK, in transit and in Sri Lanka. In relation to the risk in the UK it was open to the Tribunal to conclude that the risk of suicide in the UK would be adequately managed by the UK

authorities and that in combination with the support of the appellant's family they could bring the risk of suicide to below the Article 3 threshold when the decision to remove was taken. In relation to the risk of suicide on route the Tribunal was entitled to infer that the Secretary of State would take all reasonable steps to discharge his obligations under section 6 of the Human Rights Act and take judicial notice of the arrangements that the Secretary of State made to escort vulnerable persons on return. In relation to the risk of suicide in Sri Lanka the Tribunal was entitled to take into account the evidence that there would be family support on return, that the claimant would have access to medical treatment, and that his fears of persecution were not objectively justified.

11. The Judge specifically notes at [37] that there was no challenge to the respondent's objective evidence at paragraph 91 of the Reasons for Refusal letter in which the availability of psychiatric mental health facilities in Albania is addressed. At paragraph 92 of the reasons for refusal letter it is said that adequate care facilities in Albania are available to support the appellant on return.
12. Although the appellant has a subjective fear of ill-treatment from his father it is not made out that such fear is objectively well-founded.
13. It was not made out before the Judge that the United Kingdom government would not be able to adequately manage the psychiatric symptoms or presentation whilst the appellant is in the United Kingdom or in transit to Albania.
14. Mr Lewis sought to rely upon the decision of the Court of Appeal in *Y and Z (Sri Lanka) [2009] EWCA Civ 362* submitting that the circumstances faced by this appellant are akin to those considered in that case in which article 3 was engaged notwithstanding the availability of treatment in Sri Lanka and the absence of an objective basis for the fear. The facts of *Y and Z* are of importance for in that case the Court of Appeal said that even where there was no objective risk on return, there came a point at which the undisturbed finding that an appellant had been tortured and raped in captivity had to be conscientiously related to credible and uncontradicted expert evidence that the likely effect of the psychological trauma, if return was enforced, was suicide. The appellant's in *Y and Z* had been tortured by the authorities who were precisely those they would have to turn to, to access appropriate psychiatric treatment. It was found the degree of resulting risk of suicide was sufficient to engage article 3. In the appeal under consideration the individual the appellant fears is his father, not the State, and it was not made out the degree or impact is comparable to that found in *Y and Z.*
15. *AM (Zimbabwe) v SSHD [2018] EWCA Civ 64* concluding that whilst *N* was binding authority up to Supreme Court level, *Paposhvili* relaxed the test only to a very modest extent. The boundary had simply shifted from being defined by imminence of death in the removing state even with treatment to the imminence of intense suffering or death in the receiving state occurring because of the lack of treatment previously available in the removing state.
16. On this appeal the appellant had not demonstrated on the evidence that was threshold reached. Reliance upon paragraph [12] of the

ground seeking permission to appeal does not take account of the confirmation of the scope of the hearing from the Court of Appeal which post-dated the filing of the grounds.

17. It is not made out that appropriate psychiatric services are not available in Albania on the evidence before the Judge or submissions made.

18. In *Balogun v United Kingdom (Application no. 60286/09) ECtHR (Fourth Section)* the Nigerian applicant submitted a report from a specialist psychiatric registrar which stated that he had attempted suicide after being notified of the refusal of his human rights claim. Nonetheless, it was held that the Applicant's complaint under Article 3 against deportation was manifestly ill-founded and therefore inadmissible pursuant to Articles 55(3) and (4) ECHR. The UK Government had outlined appropriate steps it would take throughout the deportation process to protect the Applicant from the risk of suicide. In light of those precautions to be taken by the Government and the existence of adequate psychiatric care in Nigeria, the Court could not be persuaded that there would be a breach of Article 3 if the Applicant was deported to Nigeria (paras 29 – 34).

19. The finding by the Judge that article 3 ECHR is not engaged in relation to the risk of suicide is therefore not infected by arguable legal error. This matter is specifically mentioned by the Judge who dismissed the appeal on article 3 (medical grounds) within the body of the determination at [38].

20. In relation to the submission the medical aspects, even if not engaging article 3, were relevant to the appellants article 8 claim, in *MM (Zimbabwe) v Secretary of State for the Home Department [2012] EWCA Civ 279* the Court of Appeal noted that the courts had declined to say that Article 8 could never by engaged by the health consequences of removal but they had never found such a breach and had not been able to postulate circumstances in which such a breach was likely to be established. The only cases where the absence of adequate medical treatment in the country to which a person was to be deported would be relevant to Article 8 was where it was an additional factor to be weighed in the balance with other factors that engaged Article 8 (paras 17 – 23). This approach was endorsed by Lord Justice Laws in *GS(India) and Others 2015 EWCA Civ 40* (para 86). See also *MM (Zimbabwe) [2017] EWCA Civ 797*.

21. Interaction with the medical services in the United Kingdom form part of the appellants private life but that it was not made out that such could not occur with medical services in Albania such as to make any interference with this aspect of the appellants private life disproportionate.

22. The conclusion by the Judge that the appellant had not established a case sufficient to displace the public interest is a finding within the range of those reasonably available to the Judge on the evidence. No arguable legal error is made out.

23. In relation to the submissions made by Mr Lewis in relation to whether the appellant will be able to integrate back into Albania, the assertion of obstacles to preventing such integration, it has not been made out that any arguable material error has been made in relation to this

aspect. Mr Tufan relies upon the decision of the Court of Appeal in *AS v Secretary of State the Home Department [two thousand seventeen] EWCA Civ 1284* at paragraphs 58 and 59 where, giving the lead judgment, Lord Justice Moylan held:

> 58. I do not consider that Mr Buley's categorisation of some factors as "generic" is helpful. Consideration of the issues of obstacles to integration requires consideration of all relevant factors some of which might be described as generic. What Mr Buley identified as "generic" factors, as referred to above, can clearly be relevant to the issue of whether there are very significant obstacles to integration. They can form part of the "broad evaluative judgment" as is specifically demonstrated by the reference in *Kamara* to "good health" and "capable of working".
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> 59. I also reject Mr Buley's submission that, following *Kamara*, whether someone is "enough of an insider" is to be determined by reference to their ties or links to the country. This is to turn what Sales LJ said in *Kamara* into just the sort of gloss which he expressly warned against. It is clear, to repeat, that generic factors can be of significance and can clearly support the conclusion that the person will not encounter very significant obstacles to integration.

24. The appellant failed to establish before the Judge the existence of 'very significant obstacles' on the basis of his mental health difficulties, when combined with other facts, to satisfy such a requirement.
25. The appellant may have a strong subjective fear of being returned to his father's home where he will come under his father's control and may face, in his opinion, a real risk of further abuse from his father. The appellant previously lived in Dobrac, Shkoder, an area in the North of Albania 60 miles from the capital Tirana. It was not made before the Judge the appellant would need to return to his home area especially as he is now an adult.
26. As mentioned to Mr Lewis at the hearing, that the Tribunal has judicial notice of the existence of a shelter in Tirana set up to provide protection for those in precisely the position of the appellant who, as a result of acts of violence or other problems within the home, were unable to return home and require alternative support and accommodation. The shelter was set up in December 2014 at an undisclosed location within Tirana with the support of the United States Agency for International Development, the British Embassy in Tirana and the Albert Kennedy Trust. A plaque on the building also confirms that it has been made possible through Assist Impact and in partnership with the Aleaca LGBT and ProlGBT.
27. Whilst the shelter may have a limited number of beds its purpose is to enable young people aged 18 to 25 facing rejection and violence at the hands of members of their family due to their sexual orientation to avoid having to face homelessness and to live within a supportive and protective environment. The shelter has an allocated social worker responsible for assisting young people staying there in obtaining accommodation, employment, and medical and other assistance with a view to enabling them to leave the shelter and live within Albanian society, more likely than not to be within Tirana, free from harm.

Funding is provided by the US Department for International Development.

28. Those in the shelter include individuals abandoned by their families and provides medical referrals for both physical and psychological issues. Its stated aim is to support provide support to enable people to go out into the community and live a normal life.
29. It is not made out that an approach through the respondent and connections with the British Embassy would not enable the appellant to be allocated a place at the shelter or for appropriate facilities to be made available. It was not therefore, arguably, made out that even if the appellant faced a real risk in his home area that there will not be a viable internal relocation option to Tirana that it is reasonably for him to avail himself of in all the circumstances.
30. It was not made out that the appellant will be unable to seek assistance from the police if he experiences difficulties in Tirana. The Judge noted no submissions were made challenging the conclusions on asylum in the reasons for refusal letter, which at paragraph 53 stated "Consequently you have not demonstrated that the Albanian authorities or any party or organisation controlling Albania are unable or unwilling to provide protection against persecution or serious harm".
31. There was also no challenge in relation to the finding of the availability or reasonableness of internal relocation at paragraphs 54 – 59 of the Reasons for Refusal letter.
32. It is not made out that as part of any work undertaken with the appellant those providing support/counselling cannot provide reassurance that he will not be returning to his home area or to his father and that support will be available to assist with the return process and his reintegration into Albania.
33. Taking all matters in the round, I find the appellant has failed to make out error of law material to the decision to dismiss the appeal. The appellant has failed to establish, however much sympathy one may feel for him in his circumstances, that it is appropriate for the Upper Tribunal to interfere with this decision.

Decision

34. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

35. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed……

Upper Tribunal Judge Hanson

Dated the 9 April 2018