



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/03384/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 31 July 2019**

**Decision & Reasons Promulgated
On 28 August 2019**

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

**E D
(Anonymity Order Made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Fripp of Counsel

For the Respondent: Mr Turfan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Albania born in 2000. He appealed against a decision of the respondent made on 26 March 2019 to refuse his claim for protection and on human rights grounds. He seeks protection based upon his sexuality. He is gay.
2. He claims, in summary, to have become aware of his sexuality from adolescence. He lived in Tirana with his family. At school he confided in a

friend but others there became aware of it and he was bullied and taunted. In early 2015 he began a relationship with a boy. His family found out. His father became violent toward him. His mother although upset was more sympathetic. It was she who paid for him to leave Albania in early 2017 soon after he had left school. By this time his relationship with the boy had ended.

3. Since arriving in the UK a brief relationship with a man here has ended.
4. He fears return due to his sexual orientation from Albanian society generally and his violent father in particular. He has influential police friends.
5. The respondent while noting certain inconsistencies in the claim, accepted that the appellant was gay, however, any fear he has of return is not objectively well founded. There is a sufficiency of protection. He could also internally relocate.
6. He appealed.

First tier hearing

7. Following a hearing at Hatton Cross on 8 May 2019 Judge of the First-tier Tribunal Hodgkinson dismissed the appeal on all grounds.
8. His findings are at paragraph 26ff. In summary, he found the appellant's account in the country context to be plausible. He accepted the evidence as to the relationship in Albania and that they may have been "outed"; that he suffered discrimination at school; that he was abused and disowned by his father, and that his mother helped him leave the country. The judge, however, did not find it established that the appellant's father has a relationship of any material substance with any police officer, let alone an influential one. Nor was it established that his father has any ongoing interest in him.
9. Going on to consider the situation on return, the judge found from the appellant's evidence that he would not seek to practice his sexuality in such a manner that it becomes evident to society at large. He would exhibit, as he had in the past, a degree of "*cautionary discretion*" because he did not wish to be seen to attract inappropriate attention to himself and would not wish to offend social mores. As such, having noted **HJ (Iran)** and **HT (Cameroon) v SSHD [2010] UKSC 31** and the test set out by Lord Hope the judge found that the asylum claim could not succeed.
10. He then went on to note the recent Country Guidance case which indicated that in Tirana, in general, an openly gay man would not have an objectively well-founded fear of persecution and that there is a sufficiency of protection.

11. Moving on to consider human rights the judge found that the appellant could not succeed under Articles 3 and 8 on mental health grounds. Also, he did not meet the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules.
12. The appellant sought permission to appear which was granted on 20 June 2019.

Error of law hearing

13. At the error of law hearing before me Mr Fripp lodged a short skeleton argument. His main point was that the judge erred in misapplying the law when concluding why the appellant would live discreetly on return to Albania. He confused societal pressures such as the social mores of the country with social pressures of a personal nature such as not wanting to distress his parents or embarrass his friends. In a country where there is a hatred of gays, sublimating his sexuality due to societal pressures must mean that he would be doing so out of fear of persecution.
14. Mr Fripp accepted that the recent Country Guidance indicated that an openly gay man would not, in general, have an objectively well-founded fear in Tirana, however, each case had to be assessed on its own facts. In that regard the judge's findings that the father would no longer have an adverse interest in him and that the father did not have influential friends in the police were inadequately reasoned. As such the situation for the appellant might be more dangerous.
15. In a short second point Mr Fripp submitted that the judge's analysis under paragraph 276ADE was inadequately brief.
16. Mr Turfan's response was that the appellant would live quietly as he had done previously. Even if he chose to live openly he would not be at risk. The judge had dealt with the evidence in respect of the father and reached conclusions which were open to him. As for paragraph 276ADE such has a high threshold. Whilst the judge's analysis was brief, on what was advanced to him, it was satisfactorily decided.

Consideration

17. I do not find Mr Fripp's submissions persuasive. The judge (at [44]) correctly noted the appropriate tests as set out in **HJ** paragraph 35 (per Lord Hope) including, as Mr Fripp put it, the "why" test at 35(d): *"The next stage, if it is found that the applicant will in fact conceal aspects of his sexual orientation if returned, is to consider why he will do so. If this will simply be in response to social pressures or for cultural or religious reasons of his own choosing and not because of fear of persecution, his claim for asylum must be rejected. But if the reason why he will resort to concealment is that he genuinely fears that otherwise he will be*

persecuted, it will be necessary to consider whether that fear is well-founded."

18. The judge dealt with this at [48] and [50]. At [48] he found that the appellant would not seek to practice his sexuality in such a manner that it becomes evident to society at large. His history exhibited a degree of "cautionary discretion." The judge expands on why he would do so at [50], where he states that the appellant would "choose to live that life with discretion, as he has hitherto, not because of a fear of persecution but because he would not wish to be seen to attract inappropriate attention to himself and would not wish to go out of his way to offend the social mores of Albania ... societal pressures would cause him to choose to live his relatively discreetly, rather than due to a fear of persecution."
19. Mr Fripp criticised the judge for referring to "social mores" and "societal pressures" rather than "social pressures." I do not consider the judge's wording of "societal pressures" rather than "social pressures" to be significant. I do not accept that by "societal pressures" he meant these pressures to be a hatred of gays and thus his was a fear of persecution. The judge twice specifically found that the appellant living discreetly was not due to a fear of persecution. His use of the term "social mores," i.e. the traditional customs and ways of behaving ties in with the reference in **HJ** to "social pressures or for cultural or religious reasons of his own choosing." Also, as Lord Rodger put it in **HL** at paragraph 82: "If the tribunal concludes that the applicant would choose to live discreetly simply because that is how he himself would wish to live...his application should be rejected...Such a person has no well founded fear of persecution because, for reasons that have nothing to do with persecution, he himself chooses to adopt a way of life which means that he is not in fact liable to be persecuted because he is gay." In this case the judge found such (namely, living discreetly because that is how he would wish to live) to be the appellant's position. On the evidence before him for the reasons he gave he was entitled to reach that conclusion.
20. Even if I am wrong in that assessment the decision, in my judgement, does not show material error. The final and conclusive question posed in **HJ** is "does he have a well-founded fear that he will be persecuted."
21. The judge noted the recent Country Guidance namely **BF (Tirana - gay men) Albania [2019] UK 93** where the headnote states:

" ...

(ii) *Turning to the position in Tirana, in general, an openly gay man, by virtue of that fact alone, would not have an objectively well-founded fear of serious harm or persecution on return to Tirana.*

...

(iv) There exists in Tirana a generally effective system of protection should an openly gay man face a risk of harm in that city or from elsewhere in Albania.”

22. Mr Fripp’s submission was that this was not a standard case. The appellant had claimed he would be at risk from his father or the police with whom the father had influence.
23. The judge did not accept these claims. I do not find merit in Mr Fripp’s submission that the judge gave inadequate reasons in so doing. His analysis and conclusion at [42] as to why his father would have no further interest in him, namely, that his ability to attend school after his sexuality became known to the community and for the period after he left school before he left Albania, without suffering harm from his father, and that he would not be living in the family household, were open to him on the evidence.
24. Similarly, his conclusion (at [34]) that the appellant’s failure at interview to make reference to a relationship between the father and any influential police officer, despite being specifically asked, was evidence which entitled the judge to conclude that the claim in that respect had not been established.
25. Thus, for the reasons given, the appellant, even with a well-founded fear, falls within the general group of people referred to at (v) of the headnote of **BF**. The judge’s decision on the asylum claim showed no material error of law.
26. As for paragraph 276ADE(1)(vi) as Mr Turfan indicated there is an elevated threshold. The judge’s analysis, while fairly brief, is adequate. The appellant has not established he has a well founded fear. While acknowledging some mental health issues the judge found the appellant to be physically healthy and capable of employment. He has not been in the UK long and is familiar with Tirana. His conclusion that the appellant could not succeed under paragraph 276ADE is unassailable.

Notice of Decision

The decision of the First-tier Tribunal shows no material error of law and that decision dismissing the appeal shall stand.

An anonymity order is made. Unless and until a tribunal or court directs otherwise the appellant is granted anonymity. Failure to comply with this order could lead to contempt of court proceedings.

Signed

Date 23 August 2019

Upper Tribunal Judge Conway