Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11488/2018

THE IMMIGRATION ACTS

Heard at Field House
On 18 November 2019

Decision & Reasons Promulgated
On 28 November 2019

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

M D
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the Appellant or members of her family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:
For the Appellant: Ms A Patyna, Counsel, instructed by Duncan Lewis Solicitors
For the Respondent: Ms R Bassi, Senior Home Office Presenting Officer

DECISION AND REASONS

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Introduction

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Hembrough ("the judge"), promulgated on 9 July 2019, in which he dismissed the Appellant's appeal against the Respondent's refusal of her protection and human rights claims.

2. In essence, the Appellant's case was based upon the following matters. She is an Albanian national and is openly gay. As a result of her sexual orientation, she had been disowned and threatened by her own family, violently assaulted by the father of her partner, L, and abused by a police officer whilst in Albania. She claims to be at risk of persecution and Article 3 ill-treatment in that country, could not receive sufficient state protection, could not reasonably internally relocate, and would face very significant obstacles to reintegration into Albanian society, with reference to paragraph 276ADE(1)(vi) of the Immigration Rules ("the Rules").

3. In refusing the claims, the Respondent accepted that the Appellant was a lesbian, but did not accept that she had been abused by her partner's father or a police officer. It was said that she could obtain protection from the authorities and internally relocate away from her home in the North of Albania.

The judge's decision

4. The judge, like the Respondent, accepted that the Appellant is a lesbian. He made the additional findings of primary fact favourable to the Appellant:

    a) she wished to live openly in Albania with her partner;

    b) she had been abused by what is described as a "rogue" police officer in Tirana;

    c) she had been assaulted by L's father;

    d) she suffers from severe depression and symptoms of PTSD and was on appropriate medication which had in fact increased in the lead up to the hearing;

    e) that she had been fired from a previous job on account of her sexuality.

5. The judge concluded that the Appellant was at risk in her home area of Kukes, but would not be elsewhere in Albania, could obtain sufficient state protection, and could reasonably internally relocate, including going to live with her partner in the town of Durres, some 30km west of Tirana. Whilst accepting that there was societal discrimination against the LGBT community in Albania, additional problems suffered by lesbians were not sufficient to show a risk of persecution. He was of the view that the Appellant would be able to work and receive support from L, who, in the judge's view, had not been living in hiding after being removed to Albania from the Netherlands. At [63], he concluded that:

> "It seems to me that if [L] can thrive and survive in Tirana and Durres then there is no obstacle to the Appellant doing the same."

6. In respect of the Appellant's mental health, the judge found that she would be able to work at some stage, that her condition would improve upon being reunited with L, and that there was no significant risk of suicide or self-harm. Finally, the judge concluded that his findings on relevant protection-based issues meant that there were no "very significant obstacles" to reintegration under paragraph 276ADE(1)(vi) of the Rules.

The grounds of appeal and grant of permission

7. The five grounds of appeal can be summarised as follows. First, that the judge erred in his assessment of medical evidence from Dr Juliet Cohen, particularly in relation to the Appellant's overall vulnerability, the reasonableness of internal relocation, and the suicide issue. Second, that the judge failed to consider the issue of risk elsewhere in Albania on a correct footing and with regard to the relevant country information. Third, the judge failed to take proper account of the Appellant's vulnerability when assessing her evidence. Fourth, the judge made irrational findings on material matters, including those related to the internal relocation issue. Fifth, the judge failed to give separate and adequate consideration to the paragraph 276ADE(1)(vi) issue.

8. Permission to appeal was refused by the First-tier Tribunal but granted by Upper Tribunal Judge Lindsley on 16 September 2019.

The hearing

9. The Respondent did not provide a rule 24 response in this case.

10. Ms Patyna relied on the grounds of appeal and her skeleton argument. Her oral submissions were in line with the grounds and the matters set out in the skeleton argument. I intend no disrespect by not setting them out in greater detail here.

11. Ms Bassi submitted that there were no material errors overall. However, she did acknowledge some difficulties with the judge's treatment of Dr Cohen's evidence as it related to the Appellant's ability to find work and the risk of suicide.

12. At the conclusion of the hearing I announced to the parties my decision that the judge had materially erred in law as regards the issues of internal relocation, risk of suicide, and paragraph 276ADE(1)(vi) of the Rules. I reserved my decision in respect of the risk of persecution and/or serious harm in Tirana or other locations away from the Appellant's home area.

Decision on error of law

The risk issue

13. After further consideration, I have concluded that the judge did materially her in respect of the question of whether the Appellant would be at risk of persecution or Article 3 ill-treatment in locations away from her home area.

14. Whilst the judge was entitled to use BF (Tirana - gay men) Albania CG [2019] UKUT 00093 (IAC) ("BF") as what may be described as a starting point for the consideration

of risk, the obvious distinguishing fact that the Appellant is a gay woman called for additional, careful analysis. Such analysis was required in respect of not simply the attitude of the authorities towards lesbians, but also in respect of the potential risks from non-state actors.

15. In undertaking his assessment, the judge was entitled to make the observations that he did in respect of Dr Young's report, and there is no challenge to this in any event. The judge was also entitled to take into account the information contained in the respondent's Country Policy and Information Note ("CPIN") on sexual orientation and gender identity in Albania, version 5.0, published in April 2019. The evidence contained therein does indicate that real efforts have been made by the Albanian government to better the situation of the LGBT community (there being no apparent distinction drawn in the country information cited in the CPIN between gay men and women).

16. The judge's error lies in his consideration of the "double discrimination" submission made by Ms Patyna. It is clear that he refers to the point in [50] of his decision. However, it is the source of country information from which this phrase was taken (and to which the judge was referred) that is important. Section 4.4 of the United Nation's Development Programme report on the situation of the LGBT community in Eastern Europe, dated 22 November 2017 ("the UNDP report"), includes the following passages on the position of lesbians in Albania:

> "Lesbian women are less visible than gay men in Albania, because they suffer a heightened level of violence from close family. Violence against women in Albania is a pervasive practice, and lesbians are not exempt from this. On the contrary, they face double discrimination and violence, as a result both of their gender and their minority sexual orientation. This double discrimination means that lesbians are particularly vulnerable, often becoming invisible and/or dependent. Due to the widespread incidence of domestic violence, Albania has reinforced legal provisions and judicial procedures against the perpetrators. Domestic violence, sexual harassment, injuries caused from domestic violence, suicide motivated by violence, forced sexual relations and domestic violence on the grounds of SOGI are all criminalized by the Penal Code. Nevertheless, the prevalence of violence against women in Albania continues to be high and is not appropriately punished. Lesbians are among the frontline victims of domestic violence and as a consequence they may often attempt suicide to escape their unbearable family circumstances. A fear of violence and ostracism keeps them hidden in the closet. In the 2010 report on enlargement, LGBTI organizations informed ILGA Europe that lesbians have to hide their sexual orientation in Albania. The situation has not changed significantly and lesbians are still invisible within the domestic sphere and public, because of fear of violence. Domestic violence remains an issue of concern for lesbians. In addition to facing domestic violence, lesbians are often isolated at home and prevented from having physical or virtual contact with friends.
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> …
>
> Violence in public is targeted against lesbians when they make their sexual orientation visible. They are insulted, pushed away and thrown out of bars. They frequently do not report instances of domestic and public violence to the police, because of the fear of being stigmatized and insulted by police officers. Because lesbians do not report violence, and because police officers do not react swiftly in response to domestic

> violence, acts of violence against lesbians remain unprosecuted and unpunished. Legal sanctions on domestic violence are not enforced in practice. Consequently, violence against lesbian women is not addressed. Lesbians face prejudice, discrimination in healthcare and educational institutions as well, because of the low level acceptance of LGBTI people by health and educational service providers."

17. This evidence had to be assessed together with the Appellant's particular circumstances, including the fact that she would wish to live openly with her partner, that she had suffered actual harm and/or threats from her own family, the family of her partner, and a police officer. With this in mind, the ground of appeal is made out on the basis that the judge failed to provide adequate reasons for his conclusion that: a) the additional problems faced by gay women in Albania did not meet the threshold of persecution (or for that matter serious harm); and/or b) the Appellant was not at risk of persecution, given the particular facts of her case.

The internal relocation, paragraph 276ADE(1)(vi), and suicide issues

18. The judge accepted Dr Cohen's expertise and her diagnosis of severe depression and symptoms consistent with PTSD. Then, at [67], the judge finds that Dr Cohen's view that the Appellant was, as at the time of the report in March 2019, unfit for work, was "somewhat at odds" with her ability to have travelled across Europe to the United Kingdom, and to have provided her legal representatives with "reasonably coherent instructions". Further, at [68], the judge inferred that the Appellant's mental health condition would improve upon being reunited with L in Albania and that she would be able to access relevant medication.

19. The judge has failed to provide an adequately reasoned basis for effectively going behind the clear conclusion of Dr Cohen that the Appellant was not fit for work (see paragraph 56 at A89 of bundle B). There was no evidence from healthcare professionals that the Appellant's mental health had improved since March 2019. It was acknowledged by the judge that her medication had in fact been increased in the run-up to the hearing. To the extent that L's presence might have been a factor ameliorating the obstacles to finding employment, the judge appears to have left out of account the fact that Dr Cohen was fully aware of L's existence, but nonetheless concluded that the Appellant would be at heightened risk of suicide upon return. Thus, if the risk of suicide would have increased upon return despite the presence of the partner, a conclusion that the re-unification would assist the Appellant in finding work or lead to a material improvement in her overall mental health required specific consideration and clear reasons. Such reasons are, with respect, absent.

20. A further point, acknowledged by Ms Bassi as having merit, is the judge's view that any unfitness to work did not represent a "permanent state of affairs". It may of course be the case that the Appellant would, in some unspecified number of years' time, be in a position to find employment. However, that is not an appropriate yardstick to adopt when considering the issues of the reasonableness of internal relocation, suicide risk, and "very significant obstacles" under the Rules.

21. The judge's reliance upon the Appellant's ability to have travelled to the United Kingdom and then given reasonably coherent instructions to her legal

representatives is not sufficient to "cure" the errors made in respect of Dr Cohen's evidence. Aside from the first of those two considerations being historical in nature, the judge was bound to consider the expert evidence and provide adequate reasons for going behind it, if that is what he intended to do. Here, this has not occurred.

22. In respect of the suicide issue, the judge was wrong to have stated that there had been no suicide attempts in the past. Dr Cohen specifically mentions a "serious" attempt in paragraph 55 of her report. Further, whilst Dr Cohen did recognise that the relationship with the partner acted as a "protective factor", as mentioned above, she also concluded that the Appellant would be at heightened risk of suicide upon return, notwithstanding the value attributed to the relationship. Finally, at [73] the judge places weight on his conclusion that the Appellant's fear on return was not well-founded, and that this undermined the suicide risk. It is the case that the absence of a well-founded fear of persecution is not necessarily decisive of a suicide risk, a point made in Y [2009] EWCA Civ 362, a case cited in the same paragraph.

23. I am satisfied that there was no rational basis upon which the judge could have concluded that L was thriving in Tirana and/or Durres, and that there was no obstacle to the Appellant doing the same. The judge found that the partner had not been living in hiding throughout the relevant period. Even if he was also entitled to conclude that she had had to go out to shops to buy provisions and suchlike, there were other evidential matters which have either been overlooked or, if they were not, render the conclusion in question irrational. These matters include the following:

    a) there was no evidence to indicate that L was living in "close proximity" to her family;

    b) L had been ostracised by her family;

    c) L's evidence was that her family did not know of her return to Albania from the Netherlands;

    d) L is herself of course gay and subject to what the judge accepted was societal discrimination;

    e) in contrast to her partner, the Appellant suffers from serious mental health problems and had suffered from specific incidents of abuse in the past.

24. The errors set out in paragraphs 18-23, above, are all material to the issues of internal relocation, the risk of suicide, and paragraph 276ADE(1)(vi) of the Rules. It is not clear to me that the judge has in fact undertaken a comprehensive internal relocation assessment at all. However, even on the premise that he has, it has not been done on a correct footing, given the errors made relating to the Appellant's mental health and other relevant circumstances. In terms of the suicide risk, the threshold is very high, but again the assessment of this issue has not been undertaken on an adequate basis. The "very significant obstacles" issue was essentially rejected on account of the findings made under the protection claim. However, as a number of these findings are flawed, so too is the conclusion under paragraph 276ADE(1)(vi).

25. In all the circumstances, I set the judge's decision aside.

Remaking the decision

26. Both representatives were agreed that I should retain this matter in the Upper Tribunal and remake the decision.

27. In so doing, I have considered the evidence as a whole. Although the Appellant did not attend the hearing to give oral evidence, I have assessed her written evidence in the context of her being a vulnerable witness at all material times. There has been no specific challenge to Dr Cohen's report by Ms Bassi. I place considerable weight upon this evidence.

28. Ms Bassi submitted that there would be no risk to the Appellant in Tirana. She had nothing to add in respect of the internal relocation issue. Ms Patyna relied on her two skeleton arguments, the particular facts of the Appellant's case, and the country information contained in the UNDP report.

Risk in the home area

29. There is no basis upon which to disturb the core findings by the First-tier Tribunal that the Appellant is a lesbian, that she would wish to live openly in Albania with her partner, and that she is at risk of persecution for a Convention reason and Article 3 ill-treatment in her home area of Kukes.

Risk elsewhere in Albania

30. The first contentious issue to be determined is that of risk in areas away from Kukes; in particular, but not confined to, Tirana. In addressing this issue, I have had regard to the oral submissions, Ms Patyna's two skeleton arguments, and all of the country information to which I have been referred.

31. It is quite clear from the country information as a whole that the Appellant would be at risk of persecution and serious harm in the more conservative, rural areas of Albania. The respondent has not suggested otherwise.

32. I have specifically taken account of the passages in the CPIN to which Ms Bassi referred me at the hearing, namely paragraphs 4.1.4, 4.3, 4.6, 4.8, 5.0, 5.6, and 5.8. In summary, the information contained therein relates to the efforts of the Albanian authorities to enhance the rights of the LGBT community as a whole, improvements in police training, education of the population as a whole, and access to housing and employment.

33. I have also taken into account the country information cited in the reasons for refusal letter, some of which is of essentially the same effect as that referred to in the preceding paragraph.

34. The country guidance decision of BF avowedly deals only with the position of gay men in respect of risk, protection, and internal relocation in Tirana (see, for example, paragraph 7 of the decision). Notwithstanding this, it would be wrong to simply ignore the overall analysis from the Upper Tribunal. Much of the evidence considered related, at least on its face, to the LGBT community as a whole, seemingly

without distinction between gay men and women. The specific country guidance issued by the Upper Tribunal reads as follows:

> "(i) Particular care must be exercised when assessing the risk of violence and the lack of sufficiency of protection for openly gay men whose home area is outside Tirana, given the evidence of openly gay men from outside Tirana encountering violence as a result of their sexuality. Such cases will turn on the particular evidence presented.
>
> (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.
>
> (iii) There is only very limited evidence that an individual would be traced to Tirana by operation of either the registration system or criminal checks at the airport. However, it is plausible that a person might be traced via family or other connections being made on enquiry in Tirana. Whether an openly gay man might be traced to Tirana by family members or others who would wish him harm is a question for determination on the evidence in each case depending on the motivation of the family and the extent of its hostility.
>
> (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.
>
> (v) An openly gay man may face discrimination in Tirana, particularly in the areas of employment and healthcare. However, whether considered individually or cumulatively, in general the level of such discrimination is not sufficiently serious to amount to persecution. Discrimination on grounds of sexual orientation is unlawful in Albania and there are avenues to seek redress. Same-sex relationships are not legally recognised in Albania. However, there is no evidence that this causes serious legal difficulties for relationships between openly gay men.
>
> (vi) In general, it will not be unduly harsh for an openly gay man to relocate to Tirana, but each case must be assessed on its own facts, taking into account an individual's particular circumstances, including education, health and the reason why relocation is being addressed."

35. The Upper Tribunal's decision has recently been upheld by the Court of Appeal (see BF (Albania) [2019] EWCA Civ 1781).

36. Having had regard to the country information as a whole, including that considered by the Upper Tribunal in BF, I conclude that the Appellant does not face a real risk of persecution or serious harm from the authorities. I take full account of the societal attitudes towards gay women in particular (a matter to which I will return, below), together with the fact that members of the police are of course drawn from society. Having said that, the weight of the country information indicates that there has been genuine progress on the part of the authorities, not simply at an overarching governmental level, but also in terms of police training and avenues of redress insofar as misbehaviour by particular officers is concerned.

37. I reach a different conclusion in respect of the risk from the population at large.

38. The first point to make here is that I regard it as appropriate to depart from the country guidance issued by what was then the Asylum and Immigration Tribunal in

MK (lesbians) Albania CG [2009] UKAIT 00036. I do so for two reasons. First, there is current, cogent country information on the position of lesbians in Albania which is markedly different from that considered in MK. Second, the relevant conclusions in MK were based in large part on the issue of discretion as regards how a gay woman might reasonably be expected to live her life. That concept was of course disapproved by HJ (Iran) [2011] 1 AC 596.

39. The core item of country information dealing directly with the current situation of gay women in Albania is the UNDP report, quoted in paragraph 16, above. Without replicating it here, its content is striking and, I conclude, compelling. Gay women face what is described as "double discrimination", arising from both their gender and sexuality. They are described as "particularly vulnerable", being subject to the risk of violence from non-state actors, particularly if their sexual orientation is made visible.

40. The particular vulnerability of lesbians highlighted in country information is an important backdrop to the Appellant's circumstances. She would wish to live openly as a gay woman, thereby attracting the adverse attention of the population in which she would be living. She cannot be expected to reside in some sort of an artificial "bubble" in which she can only go to certain places at certain times. It is also the case that she has in fact been the victim of a violent assault by a non-state actor, namely her partner's father. Whilst his actions were targeted, what he did is entirely consistent with the country information on societal attitudes towards gay women.

41. I take into account the Appellant's particular vulnerability by virtue of her very poor mental health. This goes, in my view, to the threshold of when violence, threats, and/or discrimination crosses the line of persecution and/or serious harm.

42. By living openly, I conclude that there is a serious possibility of her being the victim of violent actions and/or very significant and pervasive discrimination. The consequences of the risk materialising would constitute persecution and/or serious harm. Thus, the two elements of "risk" referred to by Hickinbottam LJ in [27] of BF (Albania) are made out.

43. If the Appellant chose not to live openly, it is abundantly clear that this would be motivated entirely by a wish to avoid persecution and/or serious harm.

44. The question then arises as to whether there would be a sufficiently of protection for this particular Appellant. Having regard simply to BF and the general country information, I take as a starting point an ability and willingness on the part of the Albanian authorities to provide appropriate protection to members of the LGBT community. What is important though, is that the generalised position (which, in light of BF and the country information in general, does not specifically deal with the situation of lesbians) must be assessed in light of the Appellant's particular circumstances.

45. First and foremost, she is a gay woman who would wish to live openly. In that sense, she is precisely the sort of person who would be exposed to the risk of violence on a regular basis due to her sexual orientation being "visible". The UNDP report referred to previously states that:

> "They [lesbians] frequently do not report instances of domestic and public violence to the police, because of the fear of being stigmatized and insulted by police officers. Because lesbians do not report violence, and because police officers do not react swiftly in response to domestic violence, acts of violence against lesbians remain unprosecuted and unpunished. Legal sanctions on domestic violence are not enforced in practice."

46. Second, whilst it is true that the Appellant had not reported the assault on her by the police officer to other authorities, it remains a fact that she had been abused by an officer representing the very authorities to which she would be expected to approach if/when acts of violence were committed against her by non-state actors. Her willingness and/or ability to do so must be seen in this context.

47. Third, the Appellant's extremely poor mental health is also relevant to the issue of protection. Her ability and/or willingness to approach the authorities would, I conclude, be materially reduced as a consequence of her conditions.

48. Fourth, the Appellant's case involves not simply the question of protection from the population as a whole, but also in respect of her partner's family, in particular the father (who, of course, has previously located and attacked the Appellant). Whether or not the father is well-connected to the police force in or around Tirana, it is a fact that he and his family live in the general area. The father has indicated his outright antipathy towards the Appellant and there is no reason whatsoever to suggest that this would somehow dissipate over the course of time.

49. Taking all relevant circumstances into account, I conclude that on the particular facts of this case, there would not be sufficient protection for the Appellant against the risks from non-state actors.

50. On this basis, the Appellant is a refugee and a person whose removal would violate Article 3, and she succeeds in her appeal.

Internal relocation

51. If I am wrong in respect of the risk in areas away from Kukes, I go on and address the question of internal relocation. In so doing, I direct myself to the useful summary of guiding principles set out by the Court of Appeal in AS (Afghanistan) [2019] 1 WLR 5345, at [61]. The essential question is:

> "…whether in such a case "taking account of all relevant circumstances pertaining to the claimant and his country of origin, … it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so."

52. Such circumstances include a person's gender, health, life experiences, skills and education, familial ties, and the societal environment in which they would find themselves.

53. I now set out the factors which I regard as relevant to the assessment of the reasonableness of relocating to Tirana or another urban area within Albania.

54. First, the Appellant is a lesbian who would wish to live openly with her partner in Albania. Even if the difficulties faced by doing so would not constitute persecution or Article 3 ill-treatment, they would nonetheless be significant. It is not simply a question of societal discrimination against members of the LGBT community in general: on the basis of the country information there is "double discrimination" against lesbians.

55. On any view, the UNDP report quoted at paragraph 16, above, paints a bleak picture for the position of lesbians. Given that the Appellant would wish to live openly, it is quite clear to me that she would be met with serious discrimination from members of the public and, in all likelihood, various agencies of the state as well, including law enforcement. If she to live openly as a gay woman, it is equally clear that this would only be because of the consequences of not doing so. Either way, a core aspect of her identity would be significantly compromised. This is a highly relevant factor in the overall assessment of reasonableness.

56. Second, even if there was sufficient state protection insofar as the issue of risk is concerned, it does not follow that the authorities would be able and/or willing to prevent the type of "double discrimination" discussed in the country information quoted above (on the premise that such discrimination does not amount to persecution or serious harm. Further, it is of relevance that the Appellant has been abused by the police in the past, and this, combined with all other relevant matters, would make it extremely unlikely that she would wish to approach the authorities in the future.

57. Third, the Appellant suffers from serious mental health problems, in particular severe depression. Whilst there has been no formal diagnosis of PTSD, Dr Cohen makes it very clear that she presents with a number of symptoms consistent with that condition. I find that her poor mental health has persisted over time, and is certainly no better now than it was in March 2019. In addition, I note the evidence at A102-105 of bundle B. This comes from a CBT Therapist and is dated 4 October 2018. It contains scores used in self-evaluation of mental health at the beginning and the end of 17 sessions of CBT. What is striking about the scores is that rather than reducing after the course of therapy, one of them remain the same and the other actually increased. Further, I find that the Appellant's medication was increased in the lead up to the hearing before the First-tier Tribunal.

58. The consequences flowing from the very poor mental health are as follows. It is abundantly clear that the Appellant is not fit for work at present, and it is highly unlikely that she will be for a considerable period of time. The possibility of her obtaining relevant medication in Albania does not in any meaningful sense go to either reduce the seriousness of her current state of health or indeed to mitigate the likely adverse consequences flowing from the fact of removal to Albania, the country in which she has experienced traumatic events in the past. Although I accept that her partner's presence would act as a protective factor of sorts, it would not prevent a deterioration in mental health, including the risk of suicide and/or self-harm. This is consistent with Dr Cohen's evidence. Even if the risk of suicide and/or self-harm

were not sufficiently high to meet the Article 3 threshold, it would nonetheless represent a highly relevant factor in terms of the reasonableness of relocation.

59. Fourth, the previous two factors are of course related to the Appellant's past experiences. When last in Albania she was threatened by her own family and violently assaulted by her partner's father and a police officer. From a purely subjective perspective, the Appellant would be fearful of residing there and attempting to function at any relatively reasonable level within society.

60. Fifth, the Appellant is well-educated and no doubt has relevant skills. Whilst these are in principle factors weighing in favour of the reasonableness of relocation, in the present case they are more than counterbalanced by the inability to work and other significant restrictions imposed by her mental health. Indeed, I bear in mind accepted fact that the Appellant had previously being fired from a job as a direct result of her sexuality. This amounts to a clear indication of the type of significant obstacles in her path, even if her mental health problems permitted her to seek employment.

61. Sixth, on the evidence before me, the Appellant's partner is certainly not thriving in Albania: at most, she is surviving. I find that she has been entirely ostracised by her own family and in fact lives in fear of being discovered by them. She does not live in "close proximity" to them. I accept that she has been staying with a friend in a flat in Durres, and that she has been working part-time in the evenings. I see nothing implausible in the claim that she is not being going out on a regular basis to the shops or for any other reason. The fact that she lives with a friend gives rise to the distinct possibility that it is this person who undertakes such tasks. In any event, the partner, as with the Appellant, is lesbian and would wish to live openly in her gay relationship. The couple would both be living under the cloud of significant discrimination in their day-to-day lives. Therefore, the presence of the partner, whilst of emotional importance to the Appellant, does not represent a significant factor in favour of the reasonableness of relocation.

62. Seventh, it is quite obvious from what has been said already that neither the Appellant nor her partner would have any form of familial support in Albania. Further, in light of the country information I have referred to relating to the position of lesbians, it is unlikely that there would be meaningful and effective support from any LBGT organisations.

63. Bringing all of the above together, I have no hesitation in concluding that it would be unreasonable, or to put it another way, unduly harsh, for the Appellant to internally relocate anywhere in Albania.

64. As the Appellant would face a real risk of persecution for a Convention reason in her home area, and that it would be unreasonable for her to internally relocate, she is a refugee and a person whose removal would violate Article 3, and her appeal succeeds on that basis.

Paragraph 276ADE(1)(vi) of the Rules

65. On the basis of essentially the same factors considered under the heading of internal relocation, I also find that the Appellant, as at the date of her protection and human rights claims in December 2016, would have faced "very significant obstacles" to reintegration into Albanian society. I am satisfied that the situation for lesbians in Albania was no better then than it is now. In addition, there is evidence before me to show that the Appellant was suffering from mental health problems in early 2017 (see for example the Rule 35 report contained in annex J1 of the Respondent's appeal bundle). Even if the mental health conditions were not as severe as they currently are, the combination of factors would nonetheless have met the stringent threshold required by paragraph 276ADE(1)(vi) of the Rules, in conjunction with the broad evaluative assessment required by Kamara [2016] 4 WLR 152.

66. The Appellant also succeeds on Article 8 grounds, with reference to paragraph 276ADE(1)(vi).

67. In all the circumstances, it is unnecessary for me to reach a conclusion on the suicide issue.

Anonymity

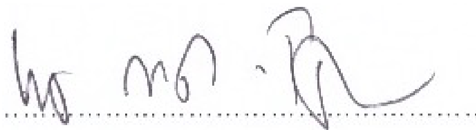
68. I continue the anonymity direction made by the First-tier Tribunal.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal.

I re-make the decision by allowing the Appellant's appeal on the grounds that the Respondent's refusal of her protection claim is in breach of the United Kingdom's obligations under the Refugee Convention, and that the Respondent's refusal of her human rights claim is unlawful under section 6 of the Human Rights Act 1998, with particular reference to Articles 3 and 8 ECHR.

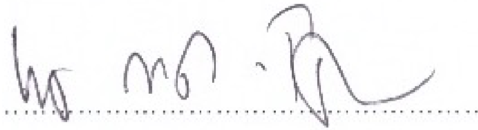


Signed .... Date: 25 November 2019

Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT
FEE AWARD

If a fee has been paid or is payable, I have considered making a fee award and decided to make a full fee award of £140.00.



Signed Date: 25 November 2019

Upper Tribunal Judge Norton-Taylor