Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/00112/2019**

THE IMMIGRATION ACTS

Heard at : Field House
On : 7 September 2022

Decision & Reasons Promulgated
On the 13 September 2022

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SB
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms K Tobin, instructed by Simman Solicitors
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Albania, born on 3 July 2003. He left Albania in March 2018 and travelled to the UK where he claimed asylum on 27 June 2018. His claim was refused on 20 December 2018, but he was granted leave until 3 January 2021 as an unaccompanied asylum-seeking child under paragraph 352ZE of the immigration rules.

2. The appellant claimed to be at risk on return to Albania on two bases: fear of a family with whom his own family was involved in a blood feud and fear of his own father who had been physically abusive to him. The respondent did not accept the appellant's claim to be at risk on the first basis and rejected his account of being in a blood feud following the kidnapping of his brother by a family with whose daughter his brother had been in a relationship. The respondent accepted the appellant's account of having suffered physical abuse from his father but considered that there was a sufficiency of protection available to him in Albania and that he could relocate to another part of the country. The respondent considered that the appellant could not meet the

requirements of Appendix FM or paragraph 276ADE(1) of the immigration rules on the basis of family and private life and did not accept that there were any exceptional circumstances which would render a refusal of his case to be a breach of Article 8 or which would justify a grant of discretionary leave. The respondent considered family tracing but concluded that endeavouring to trace the appellant's family would be contrary to section 55 of the Borders, Citizenship and Immigration Act 2009 because of his claim that his father was physically abusive. The respondent considered that the appellant's best interests could be served in Albania. However, given that the appellant was an unaccompanied asylum-seeking child under the age of 17½ and that there were no adequate reception arrangements for him in Albania, leave was granted under paragraph 352ZE of the immigration rules until 3 January 2021.

3. The appellant appealed against that decision on asylum and Article 3 and 8 human rights grounds. His appeal was initially heard on 21 June 2021 by First tier Tribunal Judge Bart-Stewart, who heard from both the appellant and his foster mother and concluded that he had fabricated his claim about the kidnapping of his brother and the blood feud and had doubts about his claim to be scared of his father. The judge concluded that the appellant could return to his home and would not be at risk of serious harm. She made no findings on Article 8 because the appellant had been granted leave and she dismissed the appellant's appeal.

4. That decision was subsequently set aside by the Upper Tribunal and the case was remitted to the First-tier Tribunal for a re-making of the decision with no findings of fact preserved other than the finding in regard to the blood feud.

5. The appeal was then heard again in the First-tier Tribunal by Judge Pooler. It was confirmed at the hearing that the respondent accepted the appellant's account of physical abuse by his father. The judge concluded that the appellant was at no risk on return to Albania as a result of a blood feud and did not accept his claim to be at risk by reason of having damaged his father's reputation. The judge concluded that there was adequate protection available to the appellant from his father and found that the appellant's humanitarian protection and Article 3 claims had to fail. The judge went on to consider Article 8. He found that the appellant's best interests lay in remaining in the UK and that there were no adequate reception arrangements in place in Albania and that he could not return to his family home because of the risk of domestic violence. He considered that it was impossible for the respondent to demonstrate that the public interest required the appellant's removal because he had been granted leave to remain on the basis that there were no adequate arrangements for his reception in place in Albania. The appeal therefore had to succeed. He accordingly allowed the appeal on Article 8 grounds.

6. There was no appeal by the appellant against that decision. However the respondent sought, and was granted, permission to appeal to the Upper Tribunal.

7. Following a hearing on 1 November 2021, I concluded that the judge had made material errors of law in his decision allowing the appeal, on the following basis:

> "12. Despite Ms Tobin's valiant attempt to argue that Judge Pooler had allowed the appeal on factors beyond those at [54], I have to agree with Ms Ahmad that the respondent's recognition of the appellant's ability to meet the requirements of paragraph 352ZE does appear to be the basis upon which the appeal was allowed. The wording of [54] suggests that the judge treated paragraph 352ZE of the immigration rules as some form of recognition of the appellant's entitlement to remain in the UK on a human rights basis, whereas that rule is a provision related to a grant of protection and is clearly time-limited.
>
> 13. Ms Tobin attempted to support the judge's decision by asserting that the factors at [51] amounted to findings on 'exceptional circumstances' for the purposes of Article 8 and that [54] had to be read in the context of [51]. However, it is clear that the factors at [51] were all related to the appellant being an unaccompanied asylum-seeking minor with no adequate reception arrangements in place for his return to Albania, whereas the respondent, by the grant of leave under paragraph 352ZE, was clearly not proposing to return him to Albania in such circumstances. I agree with Ms Ahmad that the judge failed to identify any exceptional circumstances justifying a grant of leave outside the rules and preventing the appellant's removal to Albania, and failed to undertake a full and proper proportionality assessment taking account of all relevant matters and having regard to the relevant factors in section 117B.
>
> 14. Accordingly I agree with Ms Ahmad that the judge's decision is unsustainable and has to be set aside in relation to the findings and conclusions on Article 8.
>
> 15. Both parties were in agreement that if Judge Pooler's decision was set aside, the re-making of the decision could be undertaken in the Upper Tribunal, particularly as this was the second time the decision of the First-tier Tribunal had been set aside. There has been no challenge to the judge's decision on the appellant's protection and Article 3 claim and indeed his findings and conclusions in that regard were properly made. As such those findings are preserved. The re-making will only be in regard to Article 8. There will be a need for further evidence as the circumstances have clearly changed, with the appellant no longer being a minor."

8. Judge Pooler's decision was accordingly set aside, and the matter was listed for a resumed hearing for the decision to be re-made in the appellant's appeal. Following an adjourned hearing on 7 March 2022, the matter came before me again to re-make the decision. The appellant was relying upon the same evidence as before Judge Pooler with an additional two supplementary bundles: the first containing witness statements from his foster mother AK, his foster sister KA and a former co-foster child JC, a letter from his social worker Ms Gjyshinca and background country evidence about Albania; and the second containing a more recent statement from himself dated 25 August 2022 together with statements from another co-foster child MN and a former co-foster child GC who was returned to Albania.

Hearing and Submissions

9. The appellant was in attendance at the hearing and gave oral evidence before me through an interpreter in the Albanian language. It was accepted that he should be treated as a vulnerable witness in accordance with the presidential guidance and he was treated accordingly, with particular care being given to his understanding of the questions put to him. He adopted his latest three witness statements as his evidence and was then cross-examined by Ms Cunha.

10. The appellant confirmed that he was still in contact with GC, his friend who had been returned to Albania. They had been very close previously and continued to communicate through WhatsApp about once or twice a month. He did not know if GC was in Tirana, but he knew that he was not working, that he had no family support and that he was sleeping rough. The appellant said that he did not want to trace his mother through the Red Cross because his father might beat her if he found out that they were in contact. He last spoke to his mother when they were in Italy together and he assumed that she went back to live with his father. He had no contact with anyone in Albania and did not know if his brother had returned to Albania. He believed that he was still at risk from the other family involved in the blood feud. He was currently taking medication for depression which helped him sleep and he had recently seen a doctor under the NHS in relation to his mental health and was awaiting a further appointment. He used to swim and play football which helped him with his mental health, but he had not been in the right state of mind to do that recently as he was stressed about his immigration status and the fact that he may be returned to Albania. He had completed the first part of a plumbing course but did not continue it. His foster parents provided support to him in the UK, but he would have no support in Albania and did not believe that the International Organization for Migration (IOM) would help him as they had not helped his friend GC.

11. The appellant's friend MN, who was also fostered by the same family, gave oral evidence before me, also through the interpreter, and adopted his statement as his evidence. When cross-examined by Ms Cunha he said that he also used to live with GC and he occasionally spoke to him via WhatsApp but had not spoken to him for a long time. GC had not told him anything about whether he was working or if he was receiving financial support. MN said that the appellant's mental health had become worse recently, in the past two years, and he now stayed in his room a lot on his own and did not communicate as much as previously or come out to play football or go to the gym as he had previously done. If the appellant was returned to Albania, he would still speak to him but it was not the same as spending time with him here.

12. The appellant's foster mother, AK, then gave evidence, adopting her witness statements as her evidence. When cross-examined she said that the appellant had been attending college on-line but had stopped. He had never worked and he received money from the agency and previously through his college attendance and she also supported him financially. He was able to take good care of himself and cleaned, cooked, washed and ironed for himself. If he was not feeling good they would sit with him, at night, and talk to him. He had

previously played football and gone to the gym and swimming but since the pandemic he had stayed at home. She had called the GP many times and was waiting for a referral for his mental health, as he would stay in bed a lot. His English had improved a lot and he had lots of friends at school and was quite sociable, although not as much now as previously. AK said that she had not spoken to GC since he went back to Albania, and she did not know if the appellant spoke to him. She would keep in touch with the appellant if he went back to Albania.

13. Finally, I heard evidence from the appellant's social worker, Ms Gjyshinca, who adopted her statements. She said that the appellant had not worked as he was not permitted to. He had stopped attending plumbing college as he was stressed and did not feel like attending but he now wanted to continue. He had a support network in the UK in the form of the social services, his foster carer and his friends and would lose that if he went back to Albania. She did not know about the services offered by the IOM but doubted that the appellant could access any services as he was no longer a child. She understood that his mental health had deteriorated since the pandemic and was withdrawn and quieter and she would like him to get support with his mental health although she had no concerns about his safety.

14. Both parties then made submissions.

15. Ms Cunha submitted that the appellant could not meet the requirements of the immigration rules. There were no very significant obstacles to his integration in Albania and he was able to go to Tirana which was not his home area and was therefore away from the area where he had experienced his problems before leaving the country and so would not be re-traumatised. His mental health issues did not reach the Article 3 threshold and he could not succeed under Article 8 on medical grounds without more. He would have a friend in Albania, GC, whom she did not accept was destitute as claimed given his ability to maintain a mobile phone with internet access. He would have assistance from IOM and the voluntary return package to assist him in integration. He was currently experiencing stress as a result of his uncertain immigration status but once he had some certainty, that would bring about stability. He was not at risk of being trafficked, having never been trafficked previously and having IOM support. His removal to Albania would not be unjustifiably harsh or disproportionate. The appeal should be dismissed.

16. Ms Tobin submitted that the appeal should be allowed under paragraph 276ADE(1)(vi) of the immigration rules on the basis that there were very significant obstacles to the appellant integrating in Albania. He had a traumatic history, whereas in the UK he had the support of his foster family and the local authority. His subjective fear of returning to Albania and the mistreatment he suffered as a child was a relevant consideration. He was scared that his father would trace him. He had no family network or other support network in Albania. Albania had the lowest level of professional health-care and he would therefore have issues because of his mental health. He was not someone who could realistically access facilities in Tirana in any event. Ms Tobin submitted that in the alternative the appellant should succeed on Article 8 outside the rules

considering his family life with his foster carer and she relied upon the case of Uddin v The Secretary of State for the Home Department [2020] EWCA Civ 338 in that respect.

Discussion and Findings

17. The starting point for the re-making of the decision in the appellant's appeal is the preserved findings of the previous Tribunal, namely that there was no blood feud, that the appellant was the victim of domestic abuse by his father and could not be expected to return to live with his father but that he was not at risk of persecution and was not at risk of an Article 3 breach. All parties were in agreement that the relevant issue before me was Article 8 and, whilst Judge Pooler had not found that the appellant was at risk of persecution in his home area, the appeal proceeded on the basis that Article 8 was being considered in the context of a return to Tirana and not to the area where his father lived. Although Ms Tobin was relying upon evidence relating to the appellant's mental health, that was in the context of his ability to integrate into life in Tirana and the proportionality of his return there and was not being pursued in the context of risk under Article 3.

18. It was Ms Tobin's submission that the appellant's subjective fear of returning to Albania as a result of his past experiences with his father and his mental health concerns, both of which would prevent him accessing support in Albania, together with the lack of any support network in Tirana when compared to the support network available to him in the UK, and the risk of trafficking, were all matters which amounted to very significant obstacles to his integration in Albania.

19. Turning first of all to the appellant's mental health, the evidence is somewhat limited and outdated. I acknowledge that a referral has been made for the appellant to receive psychotherapy and that such referrals take time, but that does not prevent a medical report being obtained on his behalf, as occurred in October 2020 when Dr Khan was instructed by his solicitors, if there were serious concerns about a significant deterioration in his mental health. Dr Khan's report is now almost two years old. His opinion at that time was that the appellant was suffering from a severe depressive disorder with fleeting suicidal ideas and was at risk of self-harming. However, that assessment has to be considered in the context of it having been undertaken from one interview conducted by Zoom and, furthermore, that it was based upon the account given to Dr Khan by the appellant which included one of fears arising from a blood feud related to his brother, a matter which has since been discredited. The assessment was not, therefore, based upon an entirely accurate set of circumstances and that in itself undermines the weight to be attached to the report.

20. In any event, there is no further medical evidence before me, and nothing to show that the appellant's mental health has deteriorated significantly or that there are serious concerns about his mental health, such that interventions have been necessary. Indeed, his social worker, Ms Gjyshinca, confirmed that that was not the case. The evidence of the people who were closest to the

appellant, which included Ms Gjyshinca, his foster carer and his friend, was consistent in expressing concerns about his mental health deteriorating two years ago as a result of his friend GC being removed to Albania, so making his own uncertain position more of a reality, and as a result of the pandemic which led to him ceasing his sporting activities and his studies and becoming more uncommunicative. That said, his foster mother talked of him being sociable and having made lots of friends. The overall impression of the appellant's mental health, however, was that his depression and stress were very much related to his uncertainty about his immigration status and his anxiety at having to go back to Albania, as confirmed by the witnesses. None of the witnesses referred to the appellant experiencing mental health problems arising from his father's previous abuse or to a subjective fear on that basis and indeed, as already mentioned, there is no recent medical evidence in that regard. In relation to the appellant's anxieties arising out of the uncertainty about his future, I find some merit in Ms Cunha's submission that, whilst he is very reluctant to return to Albania, the certainty of his position upon return may well provide him with some feeling of certainty and stability.

21. Ms Tobin relied upon the reference in the expert report of Dr Korovilas to Albania having the lowest level of health care professionals in Europe as a proportion of the population, but I note that Dr Korovilas also refers in his report to there being mental facilities available in the community in Tirana, albeit limited. In any event, as Ms Tobin acknowledged, the appellant has no current mental health support package in the UK and is simply waiting for some therapy sessions and taking an anti-depressant tablet. There is no evidence to suggest that that situation could not be replicated in Tirana. I agree with Ms Cunha that there is nothing in the medical evidence taken as a whole to suggest that the appellant would be at risk of suicide or would not be sufficiently capable of accessing any mental health support and treatment should he require it on return to Albania.

22. I turn to other forms of support aside from medical and mental health support. Whilst it is indeed the case that the appellant has a support system in the UK in terms of his foster carers, his social worker and his friends, I do not consider that the absence of that support system would be such as to amount to very significant obstacles to integration in Albania, a country where he had lived until the age of 15 and where he was familiar with the language and culture. It is the appellant's case that he would have difficulty finding work in Albania and supporting himself and, in that respect, I have regard to the expert report of Dr Korovilas referring to such difficulties. However, As Ms Cunha submitted, the appellant has the benefit of being able to speak English and has undertaken some studies in the UK which place him in a better position to find some employment. He would also have the benefit of a support package and assistance through the IOM and the voluntary return scheme to tide him over in terms of accommodation and income and provide him with space to look for employment. Ms Tobin did not challenge Ms Cunha's submissions in regard to such assistance being available to him. Neither did she make submissions on a risk of trafficking, although she relied upon her written skeleton argument which raised the issue. In any event I find nothing in the evidence to suggest that the appellant would be at such risk, particularly given those support

packages available to him. It is of some note that the appellant also has contact with his friend CG in Albania and, like Ms Cunha, I do not accept the evidence given in relation to him being destitute. It seemed to me that the appellant and his witness MN were being deliberately vague about CG's circumstances, with MN claiming to have not even asked CG whether he was working or how he was surviving there, and the appellant being unable to suggest how CG was able to have access to WhatsApp on a mobile telephone if he was destitute with no means of support.

23. Accordingly, whilst I have considerable sympathy for the appellant and understand his desire to remain in the UK with his support network rather than returning to the country he left some four years ago as a child and following his experiences of domestic violence, I have to agree with Ms Cunha that the evidence does not show that the high test is met to demonstrate very significant obstacles to integration in Albania. The appellant cannot meet the requirements of paragraph 276ADE(1) of the immigration rules.

24. Neither does the evidence, in my view, demonstrate any exceptional circumstances rendering refusal of leave to remain a breach of Article 8 on the basis of unjustifiably harsh consequences for the appellant nor compelling circumstances outside the immigration rules. Ms Tobin submitted that the appeal could be allowed on the alternative basis of the appellant's removal being a disproportionate interference with his family life in the UK. However, whilst the case of Uddin confirmed the scope for family life being established between an applicant and his foster family, I do not accept that that is the case with this appellant. There is clearly a relationship between the appellant and his foster mother, but the evidence of his relationship with the rest of the family is very limited (I have only a short statement from KA from March 2022). I note that AK's knowledge of the appellant's activities in terms of studies was rather confused and contradictory and find it of some relevance that she had no knowledge of his contact with CG and had not maintained any contact with her former foster child CG herself once he left the UK. However even if I accepted that there was an established family life between the appellant and his foster family, it is a limited one and I do not consider that it provides any significant weight in a balance against the public interest considerations in this case. The appellant cannot meet the requirements of the immigration rules. The factors relevant to the very significant obstacles test are the same as those relied upon in the proportionality assessment and the same considerations discussed above apply. The appellant's private life ties to the UK are limited: he has been here for only four years and has no strong links to the country in terms of employment, studies and relationships other than his foster family. He speaks English but is not financially independent. The only basis of his stay in the UK has been his minority and his status as an unaccompanied asylum-seeking child, but he is no longer a minor, although I accept that there is no bright line at the age of 18. It cannot be argued that the respondent's decision is a disproportionate one in the circumstances.

25. For all of these reasons, and having given careful consideration to all the evidence, including the medical and country expert reports, the supporting statements from social workers and friends and the helpful testimony of the

witnesses, I have to conclude that the appellant's appeal simply cannot succeed on Article 8 grounds. The appeal is accordingly dismissed.

DECISION

26. The original Tribunal was found to have made an error of law and the decision was set aside. I re-make the decision by dismissing the appellant's appeal on Article 8 human rights grounds. The previous decision to dismiss the appeal on protection and Article 3 grounds was preserved and the appeal is therefore dismissed on all grounds.

Signed S Kebede

Upper Tribunal Judge Kebede Dated: 9 September 2022