



**Upper Tribunal
(Immigration and Asylum Chamber)**
UI-2023-002801

Appeal Number:

First-tier No: PA/55871/2022
LP/00396/202

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THE IMMIGRATION ACTS

**Decision & Reasons
Promulgated
On 22 December 2023**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**AS
(Anonymity order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Lanigan, Counsel
For the Respondent: Mr A Basra, Home Office Presenting Officer

DECISION AND REASONS

Heard at Field House on 11 December 2023

The Appellant

1. The Appellant is a citizen of Albania born on 23rd June 2003. He appeals against a decision of the Respondent dated 1 December 2022 to refuse to grant him international protection. The Appellant left Albania around

September 2018 and travelled by plane to Italy. He entered the United Kingdom on 28th January 2019 by lorry. On 4th November 2019 he claimed asylum. On 23rd April 2021 an NRM referral was made as the appellant stated that he was a victim of trafficking in Albania.

The Appellant's Case

2. The appellant's case is that while still in Albania he was abducted by a gang who forced him to work on a cannabis farm. Eventually he told his father what had happened who arranged for the appellant to leave Albania to escape the gang. The appellant first travelled to Italy where he claims the gang pursued him although this was not believed at first instance. He then travelled to the United Kingdom and has remained here ever since. He states that the gang have continued to harass his family and make threats to them about him.

The Proceedings

3. The appellant's appeal against the respondent's decision was heard by Judge of the First-Tier Tribunal Clarke on 15 June 2023. The determination, in which the judge dismissed the appeal, was promulgated on 21 June 2023. The judge accepted the appellant's account that he had been forced to work on a cannabis farm but did not accept the appellant's account of events in Italy. The appellant appealed against the First-tier decision and an error of law hearing took place before Deputy Upper Tribunal Judge Farrelly who found a material error of law in the First-tier decision. He set the decision aside preserving only the negative credibility findings in relation to the appellant's claim of events in Italy. Judge Farrelly explained the reason for his decision at paragraph 11 of his determination stating:

"[Judge Clarke] had referred to positive features, including the family support [the appellant] would enjoy, his education, his good health and the apparent absence of risk factors. The judge however on several occasions referred to the absence of any threats made to his family. However, the appellant had claimed they had been approached. He said this at interview and at hearing. It was necessary for the judge to have dealt directly with this material claim. The judge did not have to accept the claim but was required to make a finding on it and to give reasons as it was relevant to the assessment of the risk. At paragraph 63 the judge had indicated an absence of threats against his family was a reason for concluding traffickers in Albania were not interested in him. Consequently, the decision is unsafe in this regard."

4. In defining the scope of the re-hearing the judge stated:

"Given the respondent accepted that the Refugee Convention is engaged by the events in Albania, the outstanding matter is an

assessment of the risk on return. As this is a discrete point it can remain in the Upper Tribunal for determination.”

Attached to this determination is a copy of the text of the error of law decision of Judge Farrelly.

The Hearing Before Me

5. In consequence of the decision to set aside in part the determination of the First-tier, the matter came before me to rehear the appeal. As this is a claim for international protection I remind myself that the burden of proof of establishing matters rests upon the appellant and the standard of proof is the so-called lower standard that is to say a reasonable chance.
6. The appellant attended and gave oral testimony through the court appointed Albanian interpreter. He adopted his two witness statements. In his first statement dated 12 February 2020 he said he grew up in Tirana. His father worked as a prison guard and his mother worked in a shoe factory. He had relatives in Greece and Italy. He described the problems he had had when he was approached whilst walking on the streets and that the people who had stopped him had some kind of grievance with his father. The appellant did not tell his parents about this incident but did go to meet the people who had stopped him. He was taken by them to a village to work on a cannabis farm. His work was daily and his hours of work varied. He was provided with food and allowed to return home every day.
7. He eventually decided to confide in his father who in turn decided that it would be dangerous for the appellant to stop working abruptly so the appellant continued for a month until his father had been able to make arrangements for the appellant to leave Albania. He travelled first to Italy. Since his arrival in the United Kingdom he had been given an opportunity to study and was living with foster parents. He was studying mathematics and English as an institution in Southend-on-Sea. If returned to Albania he believed he would be killed by the men who had forced him into a life of crime.
8. The second statement was dated 19 May 2023 and was prepared for the hearing at first instance. The appellant has not made a further statement updating matters. In the second statement the appellant said that he could not relocate within Albania as it was a small and corrupt country. Now he was over 18 the police would not take him seriously if he made a complaint about what had happened to him. He was at risk of forced labour again if returned.
9. In cross examination he said he had last had contact with his parents in Albania three or four days before the hearing before me. He had spoken to his mother and they discussed normal things such as how he was. The

conversation went on for about 15 to 20 minutes. His family were still living in the same area in Tirana at the same house. He did not speak to his father on that occasion as his father was at work, he was still a prison guard. The appellant had stopped being in contact with his family whilst in Italy. He had recommenced contact with his family in February or March 2023, "before the hearing". The reason why he had contacted his family was not because he thought it was safe to do so but because he missed them.

10. He was asked to explain the apparent inconsistency in his oral testimony that on the one hand when he had spoken to his mother a few days ago it was just about normal things but on the other hand he said that she told him the family were still being harassed by the gang that the appellant feared. The appellant replied that he had been asked what he had talked about, when he spoke to his mother they had not discussed the threats from the gang but on previous occasions when he had spoken with his mother they had discussed the threats. He spoke to his mother regularly every three or four days. The first time he spoke to her in February March 2023 before the error of law hearing. she told him about her fears.
11. The gang had harassed his family twice this year. His mother told him that they had harassed the family in January and the second time was one month ago. They went to his parents and asked where he the appellant was saying if they found him they were going to get hold of him and then they would know what they were going to do with him. None of this was reported by his parents to the police as there was no purpose in doing so because the police were corrupt. They all knew each other and nothing would be done. Asked how he knew that the police would not act on his parents' complaint he replied "we know how the police operate from other cases." By we, he meant all Albanians. He had not gone to the police to complain about this gang. It was not a guess on his part that they would do nothing, he knew from other cases. He had never had any personal contact with the Albanian police himself.
12. In re-examination the appellant clarified that he had been at school in Albania for nine years leaving school a week before he turned 15. He did not know how many times in total the gang visited the family since he left Albania. They could kill him or make him work for them again. In answer to my questions the appellant said that his father's current position in the prison service was as a prison guard who was not in charge of other guards. The appellant's father had been working as a prison guard since 2002. The appellant had not made any further witness statements since his second statement dated 19 May 2023 as he did not understand why he needed to make another statement. He had told his solicitor yesterday about the incident that occurred one month ago. He was not sure why after five years the gang still had any interest in him but perhaps it was the way he had escaped. His mother had not said any reason why the gang was still interested.

13. Counsel wished to re-examine the appellant again after my questions and I permitted her to explore with the appellant why he had not provided a further witness statement. The appellant acknowledged that he had been asked by his solicitor to make another statement but that was yesterday, a Sunday, when he had asked the appellant if there was any further harassment. When asked specifically whether his solicitor had asked the appellant to prepare another witness statement the appellant was unsure saying “maybe but perhaps I had not understood what I was being asked to do”.

Closing submissions

14. for the respondent it was noted that although the appellant had started contacting his family in 2023 before the error of law hearing, he had made no mention of this or the alleged threats in his witness statement. This omission severely damaged his credibility. He spoke to his mother regularly every three or four days but then gave very little detail about the threats. He could not explain what he thought was likely to happen to him. This was despite the fact that these threats had started from February of this year yet the appellant had no detail of them. The reason why the appellant had mentioned for the first time today that there had been three threats this year was to bolster a weak claim. The appellant’s evidence that he could not go to the police was pure speculation. He had never tried even though his father was a prison guard.
15. For the appellant Counsel relied on her skeleton argument made in preparation for the first hearing at first instance. Judge Clarke had found the appellant credible in respect of events in Albania. The core of his account had been accepted. The appellant was a young man who had been trafficked. He had been traumatised by the experience. He was internally trafficked within Albania forced to work on a cannabis farm. He provided the level of detail he could be expected to provide. He had done the best he could in terms of giving the dates of the threats to his family. Being visited by the gang was sufficiently intimidating. The threats were that they would know what to do with the appellant if they got hold of him. The appellant could not answer as to why there was a lack of detail from the gang.
16. The appellant had updated his evidence today. It was not a case of a very late statement today or of creating an account of visits. Efforts had been made by the solicitors to provide a witness statement, he had spoken to his solicitors yesterday, Sunday. The appellant should not be fixed with any failings of his legal representatives. The evidence showed that the risk to the appellant was ongoing. He had first been trafficked because of a grudge against his father. His father had not gone to the police which given that his father was a prison guard although not high-ranking spoke volumes as to the vulnerability of the appellant and the nonavailability of state protection. There was nothing to suggest that the grudge which the gang had against his father had disappeared over time.

17. Re-trafficking was a real risk in Albania as could be seen from the case law. While there were structures in place in Albania the judicial system was insufficient to protect the appellant. It was not simply a question of whether there was a police system but also a question of the willingness to operate the machinery right up to judicial level. Counsel cited sections from the background evidence to the effect that the Albanian government did not meet minimum standards for the elimination of trafficking. There was a specific problem with a denial that boys and/or gay men could be trafficked. Although there was a strong legislative framework the practice was far from adequate. There was a lack of support housing for victims. The appellant had had limited education in Albania although he was not without education. He was from the same area of Tirana where the gang operated. He was 20 and would not have a support network available. He had no family elsewhere in Albania.

Discussion and Findings

18. The appellant's account that he had been forced to work in a cannabis farm in Albania was accepted as credible by the First-tier Tribunal judge. The appellant was not found to be credible in relation to his claim that he had been followed to Italy by the same gang or others. The appellant now says that he cannot return to Albania because the gang some five years later are still interested in him and have started to threaten him once more. The evidence for this continuing threat is scant indeed. The appellant claims that there have been two threats made in 2023, in addition to one in 2018. Yet he has not seen fit to make a statement at any point in 2023 referring to these threats. It is reasonable to expect someone who claims not to be able to return to their country of origin because of continuing threats to indicate that claim at the very least to their solicitors. Particularly as the appellant knew that he had a claim for international protection to be heard by a tribunal in London. Yet that has not happened.
19. The appellant states that he spoke to his solicitor on Sunday the day before the hearing. It is not course for the tribunal to investigate what passes between a solicitor and their client as that is covered by legal privilege but even if the appellant was not put in fear by the most recent threats, he would reasonably be expected to understand that as they are part of his case and the reason why he cannot go back to Albania he would need to inform someone promptly. It is difficult to resist the conclusion that the appellant has produced this evidence at the re-hearing of his appeal in order to bolster it as the respondent submitted. The appellant has done this before, when he sought to bolster his claim by claiming that he was approached in Italy, a claim found not to be credible. I find that the appellant has embroidered his case as he has gone along.

20. The appellant had said in terms in an earlier statement that he had lost contact with his family once he was in Italy. Yet in evidence to me he said that he contacted his family in early 2023. This too was a major change in his account and yet he made no mention of it in his statement dated May 2023 nor did he make a third statement prior to the rehearing of his appeal in the Upper Tribunal. I consider this was no accident, the appellant was deliberately concealing that he was in contact with his family because he knew that to admit to that would weaken his case. As a result the appellant was forced to admit that he was in contact with his family under cross-examination.
21. There are other rather vague aspects of this case for example why the gang are apparently still interested in the appellant because they have a grudge against his father. What is the nature of such a grudge that it would be held for so long by gangsters in Tirana? The appellant does not say, indeed he appears not to have made any enquiries to find out. His father works as a prison guard and continues to do so living in the same address in the same part of Tirana yet there is no evidence from the appellant's father to support any of this and the father appears to have done nothing about making a complaint to the authorities. It is too much of a coincidence that the gang should revive their grudge against the appellant's father at just the time the appellant's case is going through the tribunal.
22. The appellant argues that the authorities have no interest in investigating complaints of crimes but it is difficult to see how he has arrived at that conclusion when he has not tried nor have any members of his family tried to make a complaint to the police. It is conceded on his behalf that there are extensive legal arrangements to deal with complaints about criminal activity. According to the US State Department report: "the government of Albania did not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so." The appellant points to other passages in the background evidence suggesting that the police are not always willing to act on each and every complaint they receive. According to the ARC report also cited in the CPIN, "Although there is a legislative framework in place there is an implementation gap". There were said to be lenient sentences for offenders and low rates of convictions.
23. However if no complaint of any kind is made to the police it is difficult to see how it can be stated with confidence that they would have done nothing if they had been told about the complaint. I agree with the submission made by the respondent in this case that the lack of interest in the appellant's complaint is speculation on the appellant's behalf. What I do find is that the reason why the appellant has not made a complaint to the police is because there is nothing to make a complaint about. I do not accept the appellant's evidence that his family have received any form of threats in 2023 or for that matter in 2018 for the reasons given above. The appellant made no mention of such threats

prior to giving evidence at the rehearing, he has not filed an updated statement and yet this is apparently the key part of his claim as to why he cannot go back.

24. The situation might be different if the appellant had gone to the police and could give evidence as to what their reaction to the complaint would be but he cannot do that. It is particularly concerning that the appellant's father who is a prison officer has not made any form of complaint himself even though apparently he is being targeted by a gang who have some rather vague grudge against him. Counsel argued that this speaks volumes as to the credibility of the appellant's claim. Indeed, but not I find that the situation in Albania is so bad that even a prison guard is afraid to contact the police but rather that the appellant simply fabricated this part of his claim and cannot support it. It is therefore not the case that the appellant can say that whilst there is an elaborate system available for dealing with complaints there is not a willingness to apply that system since no effort has been made by the appellant or his family to try.
25. The appellant was disbelieved by the First-tier when he claimed that the gang were pursuing him in Italy. I find that the appellant is also lacking in credibility when he claims that the gang is still interested in him in Albania. The appellant's lack of credibility was underlined by the way he attempted to amend his evidence in cross examination at the hearing before me. The appellant first said that when he spoke to his mother they had just spoken about general things and how he was. When it was put to the appellant that that was not supporting his case, he sought to amend his evidence by saying that his mother told him about threats on a previous occasion. If indeed threats against the family were still being made it would be of such significance that the appellant could reasonably be expected to have made this aspect of his claim clear rather sooner than in cross examination. The appellant has had some education in Albania and has continued his education in the United Kingdom learning skills. It is reasonable to expect him to understand the significance of saying that he is still under threat and the impact of that on his appeal.
26. It was also claimed on the appellant's behalf that he would be vulnerable to re-trafficking because his family were poor. This was an assertion not backed up by any evidence, I queried with counsel whether there was any information on what the appellant's father earned to compare it with what the average wage in Albania was. According to an extract from the CPIN produced by the appellant's representatives: "the basic minimum wage in Albania is 33,000 LEK a month", which I note corresponds to approximately £275, but there was no such evidence. Given that both the appellant's parents were working one of them in a government position it is difficult to see why the appellant would be so poor that he would be vulnerable to re-trafficking. It was not the appellant's case that he was bribed into working on the cannabis farm, his case was that he was

abducted and taken there. It is difficult to see why the financial status of the appellant's family would be a relevant factor.

27. I do not find that there is any risk that re-trafficking would occur for the reasons I have already given. The appellant could return to the family home where his family have lived throughout. They have not moved address. This is unsurprising given my finding that there is no reason why they should. The appellant would be supported by his family upon return. He has furthered his education whilst in the United Kingdom and no doubt the skills he has learned here would be of assistance to him upon return to Albania. I find that the appellant cannot show to the lower standard that he faces a real risk of persecution or ill harm if returned to Albania instead he will be returning to his family home. The issue highlighted by Judge Farrelly, that is an assessment of risk on return, is concluded by my finding that the appellant is not at risk of return. I do not accept the credibility of the appellant's claim that some criminals have started to take an interest in him again. I therefore dismiss the appeal.

Notice of Decision

The Appellant's appeal is dismissed
I continue the anonymity order made at first instance.

Signed this 21st day of December 2023

.....
Judge Woodcraft
Deputy Upper Tribunal Judge

TO THE RESPONDENT
FEE AWARD

As the appeal has been dismissed there can be no fee award.

Signed this 21st day of December 2023

.....
Judge Woodcraft
Deputy Upper Tribunal Judge

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002801
First-tier Tribunal No: PA/55871/2022
LP 00396 2023

THE IMMIGRATION ACTS
Decision & Reasons Issued:
10th October 2023

Before
DEPUTY UT JUDGE FARRELLY

Between

The Secretary of State for the Home Department

Appellant

and
Mr A S
(anonymity order made)

Respondent

For the Appellant: Ms Jennifer Lanigan, Counsel, instructed by Virgo Solicitors.

For the Respondent: Ms Hannah Gilmour, Senior Home Officer Presenting
Officer.

Heard at Field House on 22nd September 2023

Order Regarding Anonymity:

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the respondent and any member of her family or other person the Tribunal considers should not be identified is granted anonymity. No-one shall publish or reveal any information, including the name or address of the respondent, likely to lead members of the public to identify the respondent nor other person. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The claimant is a national of Albania, born in June 2003. He claimed protection in November 2019. This was rejected.
2. He is from Kamez, a municipality in Tirana. He lived with his parents. His father worked as a prison guard. He said that in August 2018, when he would have been 15 years old, he was threatened by men who told him they had had problems with his father and he must work for them. He met them as directed the following day. He was taken to a village and put to work on a cannabis farm. He did not tell his father of what had happened until a week later. His father told him to keep working until he made alternative arrangements. Three weeks later he and his father flew to Italy where he had an aunt.
3. He said he began living with his aunt. Later he was approached by men who told him to go back to Albania. He did not mention this to his aunt. He decided

to move out of her house and moved in with some Albanians he had met. He subsequently travelled on to the United Kingdom.

4. The respondent did not believe the account of events in Albania or in Italy. The view was he could return and live with his family in Albania. Furthermore, there was sufficiency of protection there.

The First tier Tribunal

5. The appeal came before First-tier Tribunal Judge G Clarke at Hatton Cross on 15 June 2023. The appellant was represented as he is now by Ms Lanigan. The judge decided to treat him as a vulnerable witness. He accepted the appellant's account of events in Albania. He also accepted as a victim of trafficking in Albania the claim engaged the Refugee Convention on the basis he formed part of a social group.

6. The judge did not accept the appellant's account of events in Italy. The judge did not find it credible that he would not tell his aunt or that if he were threatened he would get out of the safety of her home to live with other Albanians. If the account were true he could have approached the Italian police and sought advice from his father.

The Upper Tribunal

7. Permission to appeal to the Upper Tribunal was granted by first-tier Tribunal Judge Parkes who found that it was arguable the judge erred in the assessment of the risk for the appellant on return to Albania. The judge at paragraphs 62, and 63 and 65 had stated the traffickers in Albania had not shown an interest in the appellant as evidenced by the fact they had not made any threats against his family. However the appellant's evidence at question 77 to 80 of his asylum interview indicated they had made contact with his family and this was raised at hearing as confirmed by Counsel's note. It was arguably a material error on the part of the judge not to have dealt with this.

8. At [the] hearing, Ms Gilmour accepted that this was a material omission in what was otherwise a carefully prepared decision. Consequently, she accepted that the decision could not stand. There was no challenge by the respondent to the judge's acceptance of events pre-flight in Albania. She was agreeable to those findings being preserved.

9. She also submitted that the judge's rejection of events in Italy should be preserved. Ms Lanigan in reply contended that those negative findings should not be preserved. The appellant had said he had not told his aunt about being approached in Italy because she was a divorced woman who would be scared. She submitted that the judge had failed to factor in his subjective views bearing in mind the patriarchal attitudes prevalent in Albania.

Conclusions

10. I am in agreement with Ms Gilmour that First-tier Tribunal Judge G Clarke's determination has been carefully crafted. The decision is balanced, with the judge accepting events in Albania which another judge may well have rejected. The judge gave sustainable reasons for doing so. At paragraph 64 the judge reminded himself of the need to stand back and assess the evidence in the round. However, there was a material error in the assessment of the risk on return.

11. The judge had referred to positive features, including the family support he would enjoy, his education, his good health and the apparent absence of risk factors. The judge however on several occasions referred to the absence of any threats made to his family. However, the appellant had claimed they had been approached. He said this at interview and at hearing. It was necessary for the judge to have dealt directly with this material claim. The judge did not have to accept the claim but was required to make a finding on it and to give reasons as it was relevant to the assessment of the risk. At paragraph 63 the judge had indicated an absence of threats against his family was a reason for concluding traffickers in Albania were not interested in him. Consequently, the decision is unsafe in this regard.

12. The claim about events in Italy is quite distinct, albeit there is a suggestion there was a connection with the events in Albania. The judge gave a number of sustainable reasons for rejecting this aspect of the claim. At paragraph 56 he pointed out even though he had found one aspect of the account credible, namely the events in Albania, it did not mean all of his claim was credible.

13. He claimed to have been approached by a number of Albanians on the street in Italy and told to go back to Albania. He was so scared he ran off and did not know the man who had approached him nor did he report the matter to the police or to his aunt. The judge did not find this credible. Firstly, the judge took the view it was not credible that he did not tell his aunt. Ms Lanigan suggested the judge had failed to take account of male attitudes. The judge had rejected this as an explanation and in my view he was entitled to do so. This is also linked to the judge taking as an adverse credibility point the claim that as a result the appellant moved out of his aunt's house. Consequently, I would preserve the judge's negative findings on when I would describe as 'the Italian episode'.

14. My conclusion is that the judge materially erred in relation to the assessment of the risk for the appellant on return to Albania as a victim of trafficking. I retain the rejection of the claim relating to events in Italy. Given the respondent accepted that the Refugee Convention is engaged by the events in Albania, the outstanding matter is an assessment of the risk on return. As this is a discrete point it can remain in the Upper Tribunal for determination.

Decision

The decision of First-tier Tribunal Judge G Clarke materially erred in law and is set aside. The appeal is to be relisted in the Upper Tribunal with the findings in relation to events in Albania being reserved. The outstanding issue relates to the risk for the appellant on return.

Francis J Farrelly
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

Directions.

1. An Albanian interpreter will be required.
2. The appellant had been accepted as vulnerable. If there are any adjustments required his representative should advise.

3. A hearing time of under two hours is anticipated.
4. The appellant's representatives should prepare and upload an updated bundle addressing potential risks of re-trafficking on return for the appellant. This should be tailored to the facts personal to the appellant and the preserved findings .This should be done within 4 weeks unless more time is needed.
5. The appellant's representative should advise if any video evidence from abroad is intended to be given and confirm that protocol has been followed

Francis J Farrelly
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber