IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Appeal No: UI-2023-005175
PA/54730/2022
LP/00556/2023

THE IMMIGRATION ACTS

Decision and Reasons Issued:
On 6 August 2024

Before

UPPER TRIBUNAL JUDGE KOPIECZEK
DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

A.N.
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A. Grigg, Counsel instructed by Thompson and Co, Solicitors
For the Respondent: Mr E. Tufan, Senior Home Office Presenting Officer

Heard at Field House on 8 May 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity, because this is a protection appeal.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant is a citizen of Albania born in October 2002. He arrived in the UK on 29 March 2019 and claimed asylum shortly thereafter. His asylum and human rights claim was refused in a decision dated 12 October 2022 and he appealed to the First-tier Tribunal ("the FtT").

2. On 23 May 2022 the appellant received a positive conclusive ground (trafficking/modern slavery) decision.

3. On 14 June 2023 he was granted 12 months' discretionary leave to remain.

4. His appeal came before First-tier Tribunal Judge Easterman at a hearing on 3 July 2023 following which his appeal on asylum, humanitarian protection and human rights grounds was dismissed. Permission to appeal Judge Easterman's decision was granted by a judge of the FtT in a decision dated 28 November 2023. Thus, the appeal comes before us.

Preliminary issue-abandonment

5. A preliminary issue arises in relation to the fact that the appellant has been granted discretionary leave to remain. The chronology, some of which we repeat, is significant.

6. The appellant gave notice of appeal to the FtT on 28 October 2022 in relation to the refusal of his asylum and human rights claim. It appears from the appellant's skeleton argument before the FtT dated 11 January 2023 that a conclusive grounds decision in relation to the appellant's trafficking claim was made on 23 May 2022.

7. By letter dated 14 June 2023 the respondent wrote to the appellant's solicitors to inform them that the appellant had been granted discretionary leave to remain until 14 June 2024. The letter states that leave has been granted on the basis that before 30 January 2023 he received a positive conclusive grounds decision "and your asylum claim which relates to re-trafficking in a material part has not been finally determined". The hearing before Judge Easterman took place on 3 July 2023 and his decision was promulgated on or after 26 July 2023.

8. Permission to appeal to the Upper Tribunal ("UT") was granted by a judge of the FtT in a decision dated 28 November 2023.

9. The appellant's supplementary skeleton argument that was before the FtT, referred at para 3 to the 14 June 2023 grant of leave, without further comment.

10. S.104 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") provides as follows:

> **"104. Pending appeal**

(1) An appeal under section 82(1) is pending during the period -

(a) beginning when it is instituted, and

(b) ending when it is finally determined, withdrawn or abandoned (or when it lapses under section 99).

(2) An appeal under section 82(1) is not finally determined for the purpose of subsection (1)(b) while -

(a) an application for permission to appeal under section 11 or 13 of the Tribunals, Courts and Enforcement Act 2007 could be made or is awaiting determination,

(b) permission to appeal under either of those sections has been granted and the appeal is awaiting determination, or

(c) an appeal has been remitted under section 12 or 14 of that Act and is awaiting determination.

...

(4A) An appeal under section 82(1) brought by a person while he is in the United Kingdom shall be treated as abandoned if the appellant is granted leave to enter or remain in the United Kingdom (subject to subsection (4B)).

(4B) Subsection (4A) shall not apply to an appeal in so far as it is brought on a ground specified in section 84(1)(a) or (b) or 84(3) (asylum or humanitarian protection) where the appellant –

...

(b) gives notice, in accordance with Tribunal Procedure Rules, that he wishes to pursue the appeal in so far as it is brought on that ground."

11. The hearing before us was ostensibly for the purpose of deciding whether the grounds of appeal established that the decision of the FtT involved the making of an error on a point of law and, if so, what should follow.

12. However, before embarking on that process, we informed the parties of our concerns in relation to s.104(4A). Mr Grigg made enquiries to establish whether notice had been given to the FtT in accordance with s.104(4B)(b), namely that the appellant wished to continue his appeal. It transpired that it had not.

13. On the day of the hearing before us the appellant's solicitors wrote two letters to the UT in response to our concerns about the abandonment point. They are both described as a Notice pursuant to s.104(4B) and rule 16(3) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 ("the FtT Rules") referring to the grant of leave, stating that the appellant wished to continue with his appeal, and seeking an extension of time for the giving of notice to continue with the protection appeal.

14. It is clear that the effect of s.104(4A) on the appellant's appeal to the FtT is to treat it as abandoned because he was granted leave to remain,

unless appropriate notice is given in accordance with s.104(4B) and the FtT Rules.

15. The judge said this in relation to the grant of leave:

> "18. In submissions Mr. Grigg agreed with my suggestion that this was only an asylum claim, the Appellant having been granted one year's leave by the Respondent meaning that any human rights part of the claimed is deemed abandoned by operation of section 104, sub-section 4 of the 2002 Act. At the hearing I am not sure that Mr. Grigg had had time to think through the suggestion the grant meant that the appeal on grounds other than asylum was abandoned, and I note now looking at the section that where more than twelve months' leave is granted are the other grounds deemed abandoned (sic), and there is a process for continuing with them.
>
> 19. In those circumstances, regardless of whatever was said at the hearing on this subject, I will treat the entirety of the appeal as being alive."

16. The provisions of s.104 now, and as they were at the time of the appeal before the FtT are as we have quoted them. More importantly, the judge referred to the fact that there is a process for continuing an appeal where leave has been granted. That process requires a notice under the FtT Rules. It is apparent that no such notice was given.

17. However, it is clear that the appellant wanted to pursue his appeal notwithstanding the grant of leave. His wish to continue the appeal is evident from the skeleton argument and in submissions at the hearing. Judge Easterman considered the question of abandonment, albeit that the required notice under rule 16(3) was not given.

18. Rule 6 of the FtT Rules provides that:

> "6.—(1) An irregularity resulting from a failure to comply with any requirement in these Rules, a practice direction or a direction does not of itself render void the proceedings or any step taken in the proceedings."

19. Rule 6(2)(a) of the FtT Rules is also worth referring to. That allows the FtT to waive a failure to comply with a requirement of the Rules.

20. We had considered that it may be necessary to decide for ourselves, sitting as judges of the FtT, the question of notice under rule 16 not having been given and the related question of whether to extend time for giving such notice, applying the reasoning in *MSU (S.104(4b) notices) Bangladesh* [2019] UKUT 00412 (IAC). However, having considered the issue carefully, we are satisfied that the appeal before Judge Easterman was properly continued and not abandoned, notwithstanding that notice under rule 16 was not given. We have come to that view on the basis of rule 6, alternatively the implicit decision of Judge Easterman to waive the requirement of notice under rule 16.

21. We have considered whether, because primary legislation in the form of s.104(4B) requires notice to be given under the FtT Rules, Judge Easterman would not have had the power to invoke rules 6 or rule 16.

However, we do not consider that s.104(4B)(b) is framed in such a way as to exclude the application of the full range of the FtT Rules or, to put it another way, does not clearly indicate that a restrictive view of the FtT Rules is to be given in relation to the required notice.

22. We are satisfied, therefore, that, Judge Easterman had jurisdiction to continue with the appeal and it is not necessary for us to sit as judges of the FtT to determine any issue in relation to late notice under rule 16.

23. We now proceed to deal with the challenge to Judge Easterman's decision, starting with a brief summary of his decision.

Judge Easterman's decision

24. Judge Easterman summarised the appellant's claim as follows.

> "1. [The appellant] met a man called Fatjon Shullazi while playing football. He was offered a place in a team called FC Term. He gave his details to Shullazi and later they met and apparently FC Term had agreed to enrol him in the club. In due course Shullazi told the Appellant that the place he had got for him had cost money and he was required to work in a cannabis factory.
>
> 2. At some point the Appellant was given a delivery to make and he was arrested by police and he says he told the police everything he knew and in due course some of what he describes as the Shullazi gang were sent to prison. The Appellant only went to work for Shullazi because he was told he owed €15,000 and that if he refused to comply, he and his family would be killed. It was as a result of all of this, says the Appellant, and his father having taken advice from the police, who believed that the Appellant should leave the country, that the whole family moved to the home of a friend. In October 2018 various family members of the Shullazi gang were arrested by police. The Appellant received threats from Fatjon blaming him for the arrests of his brother and other gang members, and as a result of those threats, and the advice received, in March 2019 the Appellant fled. The Appellant maintains there are still threats being made to his family who do not have the money to leave Albania, and the gang are described as very powerful with connections within the police force."

25. In a further summary of the appellant's claim, Judge Easterman said at para 11 that the appellant's fear is of the Shullazi gang, and that as an accepted victim of trafficking he forms part of a social group who are at risk of persecution. Failing asylum, the appellant's claimed is based on Articles 2 and 3 of the ECHR.

26. Judge Easterman gave a detailed summary of the parties' submissions. In his findings he accepted that the appellant was trafficked within Albania. He noted at para 32 the limited mention of the Shullazi gang, despite there being some 2,000 pages of documents in the bundle, albeit that the bundle included case law. He also noted that the expert Dr Korovilas "who claims a great knowledge of the country particularly with regard to trafficking", is unaware of the gang.

27. At para 33 he said that he had no knowledge of whether Shullazi is a common name in Albania or whether there is proof that the Fatjon Shullazi referred to by the appellant is indeed part of the same gang as Emilijano Shullazi, said to be his brother.

28. On the issue of whether the appellant is a member of a particular social group within the meaning of the Refugee Convention, he said that he had been referred to much case law to the effect that male victims of trafficking can be part of a particular social group, as some trafficked women have been found to be. However, he said that that is a long way from saying that every male victim of trafficking is a member of a particular social group.

29. At para 36 and following, Judge Easterman raised the question of whether trafficked people would be identified as such by others and whether they would be persecuted as a result. He referred to the stigma attached to those who were trafficked in the context of Albanian culture. At para 37 he drew a distinction between those who had been subjected to sexual violence and misconduct in terms, for example, of disclosure even to close relatives, but he said that he could not see how this applies equally to those who were required by criminals to work in a cannabis factory. In any event, on the facts of this case the appellant had the courage to go to the police.

30. Judge Easterman referred at para 41 to corruption in Albania, and background evidence in relation to Emilijano Shullazi and his family connection with the head of the Prison Directorate called Fatjon Bonaca, although there is no separate mention of Emilijano having a brother Fatjon. He also noted that the background evidence does not include mention of the appellant in terms of the reasons for the imprisonment of Emilijano Shullazi. At para 43 he said that however well known the Shullazi gang is, they are clearly not above being imprisoned.

31. At para 44 Judge Easterman again noted the case law with regard to trafficking and the potential dangers of re-trafficking, but he noted that when the appellant had a debt created by reason of his having been scouted for a football team by Fatjon Shullazi, he was a child at the time and it was easy to see how he might have been taken advantage of. He concluded that there was no reason to believe that were he to return to Albania he would make the same mistake twice. He found that the "general proposition that those who have been trafficked are easy pickings to be re-trafficked" does not seem to fit with the appellant who has done well in the UK, is clearly intelligent and will have the advantage of having his past experience to make him wary in the future.

32. At para 45 he concluded that if the gang was the Shullazi gang and they are as powerful as claimed, it is unlikely that the appellant would have been left unharmed, "wherever in Albania the Appellant and his family were", particularly since he is said to have been responsible for some of them having been imprisoned. He concluded that the fact that no steps

were taken to prevent the appellant leaving Albania suggests that either the Shullazi gang that the appellant was involved with is different from the Shullazi gang reported in the press or that the gang are simply not as powerful as claimed.

33. In the same paragraph he concluded that parts of Dr Korovilas' report have simply ignored the appellant's account and speculated about general possibilities, which are not in line with the appellant's account.

34. Judge Easterman concluded, therefore, that whilst he accepted that the appellant was trafficked in Albania, he did not find on the facts of his case that he is part of a particular social group and at risk of persecution on return because of a particular inalienable characteristic.

35. Although Judge Easterman accepted that those who have been trafficked may be more liable than others to being re-trafficked, notwithstanding Dr Korovilas' report, the appellant had not established that he was at real risk of being re-trafficked.

36. He further found that the appellant would not be at risk from the Shullazi gang, that they are not as powerful as claimed and that there is a sufficiency of protection on the basis that the State authorities are prepared to act against them.

37. At para 49 he found that the fact that the appellant and his family were able to relocate internally and lived for six months without further problem whilst the appellant was in Albania, suggests that internal relocation "is neither impossible" or unduly harsh.

38. At para 50 Judge Easterman referred to the appellant having been adamant in his evidence that his father left Albania in order to work, for a better life and not because of threats related to the appellant. He concluded that this suggested "again" that the later claim of threats against his family are simply an embellishment.

The grounds of appeal

39. The following is a summary of the five grounds of appeal. Ground 1 argues that Judge Easterman erred in failing to have regard to relevant country guidance, in particular *TD and AD (Trafficked women)*(CG) [2016] UKUT 92 (IAC) and its predecessor *AM and BM (Trafficked women) Albania* CG [2010] UKUT 80 (IAC). This ground, in essence, argues that if that country guidance had been considered (notwithstanding that *TD and AD* are specifically about trafficked women) Judge Easterman would have addressed the various risk factors that applied to the appellant on the specific facts of his case.

40. Ground 2 argues that Judge Easterman failed to have regard to relevant evidence on the question of sufficiency of protection. The appellant's evidence was that Emilijano Shullazi had previously been arrested many times for murder, kidnapping and other crimes but had always been

released with payments of bribes before general elections and then used by politicians to scare people into voting for them at elections. The fact that Emilijano Shullazi was imprisoned was not, therefore, inconsistent with the appellant's case that the gang had corrupt links to the authorities or that he could not be protected from them.

41. Paragraph 10 of the grounds refers to background evidence cited in the respondent's decision letter about Emilijano Shullazi and his alleged relationship with the government. The grounds also refer to other background evidence of a more general nature in relation to corrupt links between criminal gangs and the authorities.

42. The grounds further contend that Judge Easterman's reference at para 40 of his decision to "the assistance [the appellant] got from the authorities" misrepresents the appellant's evidence about what the authorities did. The grounds refer to the appellant's evidence of his father speaking to the police who, in effect, said that they could not protect them, and that the family went into self-confinement.

43. Ground 3 again relies on country guidance in terms of internal relocation and its ineffectiveness as a means of avoiding the persecutors (*AM and BM)*, as well as *BF (Tirana – gay men) Albania* CG [2019] UKUT 0093 (IAC), and other country background evidence.

44. In addition, it is argued that Judge Easterman had not taken into account the appellant's evidence of how the family had escaped harm after moving to a new area, i.e. that they were in self-confinement. In this context, *EH (blood feuds) Albania* CG [2012] UKUT 348 (IAC) is relied on, as well as the appellant's evidence from his asylum interview that his family had been threatened three times and told by "Fatjon's people" that if they go out they would be killed.

45. Ground 4 takes issue with Judge Easterman's conclusion in relation to particular social group, relying on *DH (Particular Social Group: Mental Health) Afghanistan* [2020] UKUT 223 (IAC) in terms of the need for a person to share an innate characteristic and so forth, and to have a distinct identity.

46. Ground 5 concerns an aspect of Judge Easterman's decision relating to Emilijano Shullazi and Fatjon Shullazi where he is said to have mischaracterised the appellant's evidence as to the relationship between the two men. The grounds contend that Judge Easterman was wrong to find the appellant's account lacking in credibility, on the basis of a mistake in thinking that the appellant had said that these two men were brothers, when that was never the appellant's case. Contrary to Judge Easterman's understanding, the appellant had not said that Emilijano Shullazi was arrested because of information provided by the appellant, but that he had been told that Julian Shullazi, who is Fatjon's brother, was arrested for that reason. The appellant had said in his asylum interview that he did not know the relationship between Fatjon and Emilijano.

Submissions

47. In his initial submissions, Mr Grigg relied on the detailed grounds and equally comprehensive skeleton argument.

48. Mr Tufan submitted that the fact that Judge Easterman did not refer to any country guidance does not mean that there is any error of law in his decision. It was pointed out that at para 35 he said that he had been referred to much case law on the question of victims of trafficking. He concluded that not every male victim of trafficking was a member of a particular social group. At para 38 he had referred to Dr Korovilas' report and found shortcomings with it, including the suggestion in the report that no one could relocate in Albania.

49. Mr Tufan also referred us to paras 32 and 40 where the expert's report is also considered. Judge Easterman had also referred to background evidence at para 42.

50. Mr Tufan submitted that although Judge Easterman accepted that the appellant was a victim of trafficking, he found that he would not be re-trafficked by this group that even the expert did not refer to. It was submitted that consideration was given to the issue of internal relocation by the family, at para 49. Judge Easterman had concluded that the claim of later threats was simply an embellishment.

51. It was submitted that Judge Easterman had made reasoned findings which he was entitled to make on the evidence.

52. In reply, Mr Grigg succinctly submitted that the respondent's submissions did not address the matters raised in the grounds of appeal.

Assessment and Conclusions

53. The grounds of appeal are closely interrelated. The appellant's detailed and comprehensive skeleton argument for the hearing before us deals with the grounds of appeal in a different order from that in the grounds of appeal. We deal with the grounds in the order set out in the grounds of appeal, with the exception of ground 4 which we consider last.

54. In relation to ground 1 (failure to have regard to country guidance) it is trite law that country guidance is binding on the FtT provided that the appeal relates to the country guidance in question, and depends of the same or similar evidence (Practice Directions of the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal, as amended 18 December 2018).

55. Whilst it is clear that the judge did not specifically cite any country guidance, it is apparent that he did have regard to it. For example, at para 35 he expressly stated that he had been referred to much case law in relation to victims of trafficking, and the issue of particular social group. At para 32 he made brief mention of "the case law" in the context of the

large volume of documentation. At para 44 he said that he accepted the case law with regard to trafficking and the potential dangers of re-trafficking. At para 47 he said that he accepted that those who have been trafficked may be more liable than others to be re-trafficked, although found that such was not the case for this appellant.

56. It is also to be borne in mind that the most recent country guidance of *TD and AD* is specifically about trafficked women, as is *AM and BM*. Although para 3 of the grounds refers to background evidence within *TD and AD* about the risk factors for men and boys, it is not suggested that that evidence forms part of the actual country guidance in the case.

57. Furthermore, it is clear from the country guidance that there is a requirement for individual assessment based on the facts of the case in terms of risk, which is the basis upon which the judge approached this case.

58. Accordingly, we are not satisfied that ground 1 is made out.

59. As regards ground 2 (sufficiency of protection), the judge was plainly aware of the issue of corruption and the extent to which this had an impact on the appellant's claim. The judge also took into account background evidence in relation to the Shullazi gang, referring to it in general terms at para 32, and again in general terms in relation to Emilijano Shullazi at para 42. We also bear in mind that a judge is not expected to refer to every piece of evidence.

60. At para 31 he stated that the appellant went to the police and they helped him and that the appellant was, in effect, responsible for a number of members of the gang being imprisoned and prosecuted. At para 43 he stated that however well-known the gang are, they are clearly not above being imprisoned.

61. However, the appellant's evidence was that Emilijano Shullazi had been arrested for serious crimes many times but was always released on payment of a bribe. There is background evidence in relation to Emilijano Shullazi cited in the decision letter in terms of suspected government collaboration with gangs, including that individual. The Judge was clearly somewhat sceptical about the extent of the influence of the Shullazi gang, including on the basis that Dr Korovilas does not refer to it in his report and noting at para 32 that there is very limited mention of them in the background evidence. There was background evidence before him, however, which spoke to their influence.

62. On the other hand, we note that the Judge considered, in the alternative, the possibility that there was another gang with the name Shullazi that was not the one that is claimed by the appellant to be the influential and powerful Shullazi gang that he claims to fear. The Judge mentions this possibility at paras 33, 42, 45 and 48. Regardless of the argument that the Judge misunderstood the appellant's case in terms of whether or not Fatjon was Emilijano Shullazi's brother, he was entitled to make his

findings on the basis that there was a lack of clarity in relation to whether or not the gang that the appellant fears is the Shullazi gang referred to in the background information. From para 25 of the judge's decision it can be seen that this was a matter that the respondent raised in oral submissions. More importantly, it is a matter that the judge canvassed with the appellant's advocate (para 17).

63. We note that in the appellant's witness statement dated 13 June 2019, he states that his father told him that the police would not protect them from the gang, would only intervene if someone was killed, and would not waste their time investigating threats. According to the witness statement, what the police reportedly said to his father was that it was better to move to avoid being killed by the Shullazi gang. In addition, the appellant's evidence is that he and his family went into self-confinement in another location.

64. Accordingly, considering the various facets of the argument, we do not consider that it is entirely accurate for the judge to have concluded at para 41 that the appellant would, on the basis of his own account, get assistance from the police. The statement at para 31 of the judge's decision that it is the appellant's case that the police helped him, only partially reflects the appellant's case, which was that they could not in fact offer him or his family any real practical assistance. We are satisfied that the judge erred in law in his assessment of the appellant's evidence of the assistance he received from, or was offered by, the police.

65. Nevertheless, we are not satisfied that any error of law in the judge's assessment of the evidence in this respect is material in the light of his doubts about whether the gang that the appellant fears has the reach and influence suggested, and his later conclusions in relation to internal relocation which we consider further below.

66. As regards ground 3, we are not satisfied that there is any error of law in the judge's decision on the basis of a failure to have regard to country guidance in relation to internal relocation. Although the grounds rely on extracts from the decisions in *TD and AD,* and *AM and BM*, in neither case does the guidance itself state that internal relocation is never possible, which the grounds imply. Nor does *BF (Tirana - gay men) Albania* (CG) [2019] UKUT 93 state that internal relocation is not possible; on the contrary. The judge was entitled to comment on the implication in the report of Dr Korovilas that no-one can relocate within Albania. *EH (blood feuds) Albania* CG [2012] UKUT 348 (IAC), in the context of blood feuds, reflecting for example para 70 of that decision, in its headnote guidance at para 3 states that:

> "Internal relocation to an area of Albania less dependent on the Kanun may provide sufficient protection, depending on the reach, influence, and commitment to prosecution of the feud by the aggressor clan."

67. We accept that the judge's decision in relation to the family history of internal relocation does not reflect the appellant's evidence that the family

had to self-isolate and that they had been subjected to threats not to go out.

68. Nevertheless, although the grounds refer to *EH* at para 5(ix) which states that "a self-confined person will not usually be at risk in their home", it is to be remembered that that is part of the explanation of the key concepts of blood feuds. It relates to concepts of Kanun law. This appellant's claim is not based on a blood feud or concepts of Kanun law.

69. In those circumstances, the judge was entitled to take into account that no actual harm had come to the family in the place of their relocation. At para 45 he referred to background evidence of how such gangs operate, concluding that it was unlikely that the appellant would have been left unharmed and noting that no steps were taken to prevent the appellant leaving the country. Again, although at para 49 the judge did not refer to the evidence of threats to the family that they should not go out, he was entitled to take into account that the family lived for six months in the area of relocation without actually being harmed. Again, it is to be remembered that it is not suggested that this was a blood feud in which the principles of Kanun law applied.

70. In addition, the judge took into account at para 50 that the appellant was adamant in his evidence that his father left Albania to find work for a better life and not because of threats arising from the appellant's actions.

71. We now deal with ground 5, which we have summarised at para 46 above. The grounds refer to the appellant's evidence as to the relationship between Emilijano and Fatjon and asserts that the judge misunderstood the evidence as being that Emilijano and Fatjon were brothers.

72. The difficulty with this argument is that the appellant's skeleton argument before the judge dated 11 January 2023, which the later skeleton argument dated 3 July 2023 adopts, advances a different case in relation to Emilijano. At para 16 of the skeleton argument under the heading "Fear of Fatjon Shullazi" it states that "[The appellant] further relies on the material *surrounding Fatjon's brother Emiliano*" (our emphasis). At para 24 of the skeleton argument under the heading "Risk on return" it states that "This is further supported by the fact that *the brother of Fatjon Shullazi, Emiliano* (our emphasis), was convicted after numerous years and a number of delays." At para 26 it states that "The evidence suggests that *the brother of Fatjon, Emiliano* (our emphasis), is a high profile figure." At para 38 the same skeleton argument asserts that "…high levels of corruption provide for a lack of protection for A if returned, especially in view of the fact that *the brother of the person that he fears* will target him is a high-profile individual" (our emphasis). The spellings of Emiliano and Emilijano are different but it is clear that they refer to the same person.

73. The judge was entitled, indeed bound, to deal with the case on the basis of the way that it was presented by the appellant's representatives. In any

event, at para 42 the judge did express some reservation about the relationship of the two as brothers, noting that the background evidence did not suggest that Emilijano had a brother called Fatjon.

74. The best that can be said on behalf of the appellant on this issue is that the judge rejected incorrect propositions that Emilijano was Fatjon's brother and that Emilijano was imprisoned because of the appellant. On that basis, all that the judge had done was to decide an issue that it was unnecessary for him to decide. That does not have any significant effect on the judge's overall assessment of the risk to the appellant.

75. Whether or not the judge's doubts about whether the Shullazi gang were responsible for the appellant's trafficking reflected his misunderstanding of the evidence, it is clear that the judge had a freestanding concern about this issue, having raised it with the appellant during his oral evidence (para 17). It is also evident in his observation at para 33 about whether or not the name Shullazi is common in Albania.

76. We are not satisfied, therefore, that ground 5 is made out.

77. As regards ground 4, we are, however, satisfied that the judge erred in his assessment of the question of whether the appellant could be said to be a member of a particular social group. The UT's decision of *DH*, with which we agree, makes it clear that for a person to be a member of a particular social group it is not necessary for that person to share an innate characteristic and so forth, and to have a distinct identity. The same conclusion was reached by the UT in *EMAP (Gang violence, Convention Reason)* [2022] UKUT 335 (IAC), referred to in the appellant's skeleton argument before us.

78. However, we are not satisfied that the judge's error of law in this respect is material. He concluded that the appellant had not established on the facts that he would be at risk on return, in terms of re-trafficking or otherwise. Whether or not he was a member of a particular social group he would be able to return in safety and live in another area.

79. Although the grounds of appeal rely on the risk factors in terms of individual characteristics described in *TD and AD*, the judge plainly did take the appellant's characteristics into account, at para 44 in the context of the facts of his case. He noted that the appellant was a child at the time of his involvement with the gang, stating that it was easy to see how he might have been taken advantage of, and concluding that there was no reason to believe that he would make the same mistake twice. He concluded that the general proposition that those who have been trafficked are "easy pickings" did not seem to apply to the appellant who had done well in the UK, was clearly intelligent and has the advantage of his past experience to make him more wary in the future.

80. Whilst, therefore, we are satisfied that the judge erred in law in the respects to which we have referred, we are not satisfied that those errors of law are material.

Decision

81. The decision of the First-tier Tribunal involved the making of an error on a point of law. However, the errors of law are not material and its decision is not set aside. The decision to dismiss the appeal on all grounds, therefore, stands.

A.M. Kopieczek
Judge of the Upper Tribunal
Immigration and Asylum Chamber

19/07/2024