Upper Tribunal
(Immigration and Asylum Chamber)

MB (Internal relocation – burden of proof) Albania [2019] UKUT 00392 (IAC)

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 20 June 2019	**……**

Before

UPPER TRIBUNAL JUDGE DAWSON
UPPER TRIBUNAL JUDGE KEITH

Between

MB
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Dr S Chelvan, instructed by S M A Solicitors
For the Respondent: Mr D Clark, Senior Home Office Presenting Officer

The burden of proof remains on the appellant, where the respondent has identified the location to which it is asserted they could relocate, to prove why that location would be unduly harsh, in line with AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 445 (IAC), but within that burden, the evaluation exercise should be holistic. An holistic approach to such an assessment is consistent with the balance-sheet approach endorsed later in SSHD v SC (Jamaica) [2017] EWCA Civ 2112, at paragraphs [40] and [41]. MM v Minister for Justice, Equality and Law Reform, Ireland (Common European Asylum System – Directive 2004/83/EC) Case C-277/11 does not impose a burden on the respondent or result in a formal sharing of the burden of proof, but merely confirms a duty of cooperation at the stage of assessment, for example the production of the country information reports.

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DECISION AND REASONS

1. This is the remaking of the decision in the appellant's appeal against the respondent's refusal of her human rights and protection claim.

2. The appellant, a citizen of Albania, made a claim on 15 March 2017, based on her accepted bisexuality and the consequent hostility from her father, whom she said had threatened to kill her. She had left Albania in February 2017 after a period of study at the University in Tirana and entered the United Kingdom ('UK') in March 2017.

3. The respondent refused the appellant's protection claim and application for leave to remain based on human rights in a decision dated 10 April 2017 (the 'Decision').

4. The appellant's subsequent appeal was originally dismissed by a First-tier Tribunal Judge, (the 'FTT') in a decision promulgated on 27 July 2017. The FTT's decision was challenged and at a hearing on 2 October 2018, the Upper Tribunal, comprising a panel of The Honourable Lady Rae, sitting as a judge of the Upper Tribunal, together with Upper Tribunal Judge Dawson, set the FTT's decision aside, while preserving specific findings; and adjourned the case for a hearing to remake the Decision. A copy of their error of law decision is annexed to this remaking decision.

5. In setting aside the FTT's decision, the Upper Tribunal panel concluded that the FTT had erred when considering the appellant's ability to internally relocate within Albania, by failing to indicate the precise destination that she could internally relocate to, thereby considering that issue in a vacuum. The question that the FTT should have asked, once the destination was decided upon, was whether it would be reasonable for her to live in such a place that might require her to keep her sexuality secret from landlords, employers and friends. This would need to be considered in the context of the appellant's mental health.

6. The Upper Tribunal preserved the FTT's findings as to the risk faced by the appellant from her father and the reach of that risk, such that she could not internally relocate to Tirana, Tepele, Durres and Volore. The respondent had asserted in the Decision that the appellant would be able to internally relocate to Shkodër in northern Albania.

The core issues in this appeal

7. The central issue for us is whether it would be unduly harsh to expect the appellant to relocate to Shkodër. The parties did not produce any additional evidence that was not before the FTT and instead each said that the burden of proving that internal relocation was, or was not, unduly harsh, was on the other party. The appellant asserted that the respondent had produced no evidence on which this Tribunal could rely to show that relocation to Shkodër was not unduly harsh; whilst the respondent asserted that having identified the city to which the appellant could relocate, it was for the appellant to provide an explanation, together with evidence, as to why it would be unduly harsh for her to relocate there; and that the appellant's appeal should fail because there was an absence of evidence to suggest

that relocation would be unduly harsh. Accordingly, tied in with the issue of internal relocation was the question of where the burden of proof lay.

8. Whilst the appellant had continued to pursue all grounds of challenge to the FTT's decision, including those relating to an assertion that the level of discrimination within Albania was of such severity that it amounted to persecution and that there was not sufficiency of protection in Albania, there were no substantive submissions by Dr Chelvan on these grounds and we reminded ourselves that we were remaking the FTT decision and so were not limited to the grounds of challenge. However, no additional evidence, beyond recent Country Guidance, as to which we say more later in this decision, was provided, which was not available to the FTT.

Burden of proof

9. It was of some surprise to us that in referring to a number of authorities, neither party referred us to the Court of Appeal case of SSHD v SC (Jamaica) [2017] EWCA Civ 2112, in which the Senior President of Tribunals addressed the burden and standard of proof in respect of internal relocation. Nevertheless, we drew this case to the attention of the representatives, who were able to address us on the case.

The appellant's submissions

10. Dr Chelvan developed his submission that the appellant's appeal must succeed as the respondent had failed to discharge its duty with reference to article 8 of the Qualification Directive ('QD') 2004/83/EC, which deals with internal protection, and which is set out below:

"1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country.

2. In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant."

11. In essence, the respondent had failed to have regard at the time of taking the Decision the general circumstances prevailing in Shkodër, in the context of the appellant's personal circumstances and that was a minimum requirement, the burden of which was on the respondent. The respondent could not now seek to remedy the absence of proper consideration, but in any event, had not produced any evidence to do so.

12. Dr Chelvan sought to distinguish the Upper Tribunal case of AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 445 (IAC), relied on by the respondent as authority for proposition that the legal burden was on the appellant to prove that she was entitled to legal protection. AMM had referred to the respondent '*pointing to evidence regarding the general conditions*' in the

proposed place of relocation, but in the appellant's case, there had been no assessment of the circumstances of Shkodër. AMM also predated the CJEU case of MM v Minister for Justice, Equality and Law Reform, Ireland (Common European Asylum System – Directive 2004/83/EC) Case C-277/11, which this Tribunal cannot ignore. MM indicates that there is a duty of the parties to co-operate, as indicated at paragraphs [63] to [65]:

"63 As is clear from its title, Article 4 of Directive 2004/83 relates to the 'assessment of facts and circumstances'.

64 In actual fact, that 'assessment' takes place in two separate stages. The first stage concerns the establishment of factual circumstances which may constitute evidence that supports the application, while the second stage relates to the legal appraisal of that evidence, which entails deciding whether, in the light of the specific facts of a given case, the substantive conditions laid down by Articles 9 and 10 or Article 15 of Directive 2004/83 for the grant of international protection are met.

65 Under Article 4(1) of Directive 2004/83, although it is generally for the applicant to submit all elements needed to substantiate the application, the fact remains that it is the duty of the Member State to cooperate with the applicant at the stage of determining the relevant elements of that application."

13. In the case before us, the first time that the appellant knew that she was expected to relocate to Shkodër was when she received the Decision.

14. Mr Chelvan argued that the Court of Appeal in AS (Afghanistan) v SSHD [2019] EWCA Civ 873 was the first occasion when internal relocation was considered through the prism of the QD and the issue of burden of proof was not addressed in that authority, so the issue of burden of proof was a novel one. Had the Court of Appeal regarded the case of SSHD v SC [2017] Civ 2112 to be authority on the issue of burden and standard of proof, then it would have referred to SC. It did not, although Dr Chelvan accepted that the Upper Tribunal in AS had referred to SC. SC was distinguishable in any event, as it was a deportation case considering article 3 of the ECHR alone in circumstances where the appellant in that case had not rebutted the presumption that he had been convicted of a particularly serious crime and constituted a danger to the community of the UK, pursuant to section 72 of the Nationality, Immigration and Asylum Act 2002, so that he was excluded from protection under the Refugee Convention.

15. In the context of AS being the first case to consider the issue of internal relocation through the prism of the QD, Dr Chelvan did, however, accept that paragraph 339O of the Immigration Rules, which the Court of Appeal had considered in SC, transposed article 8 of the QD.

The respondent's submissions

16. Mr Clark referred to AMM, which had expressly referred to article 8 of the QD. The phrase, "*shall…have regard to the… circumstances*" did not alter the burden of

proof. There was nothing in the QD which set out the procedure for an assessment of internal relocation, as accepted by the Upper Tribunal at paragraphs [220] to [221] of AMM.

17. The assertion that because the Court of Appeal considered internal relocation the first time through the prism of the QD in AS, this undermined the relevance of AMM, was not correct, as Dr Chelvan had accepted that paragraph 339O of the Immigration Rules had transposed article 8 of the QD.

18. Mr Clarke argued that SC is consistent with the proposition that once the respondent has identified a suggested location at which the appellant can internally relocate, then the burden is on the appellant then to explain why relocation to the identified location would be unduly harsh. The burden is on the party seeking protection to prove their entitlement.

Discussion and conclusion on burden of proof

19. Whilst in an analysis of legality for the purposes of a judicial review application, the lawfulness of a process might be determinative of an application, here, we are not concerned with the legality of the process by which the respondent reached its decision. Instead we are to decide whether the appellant is in need of international protection and, specific to this case whether the option of internal relocation can avail her in the light of the accepted fact of a risk of persecution in other parts of Albania. The burden of proof is on the appellant to make out her case; the respondent has raised the availability of internal relocation in the Decision and in accordance with the approach enjoined by the CA in SC, at paragraphs [33] to [34]:

"33. The issue of the reasonableness of internal relocation accordingly involves three separate questions:

1. What is the location to which it is proposed the person could move?

2. Are there real risks of serious harm or persecution in this place?

3. If not, is it reasonable or not unduly harsh to expect the person to relocate to this place?

34. The first question is a factual question and the second question is an evaluation to be resolved on the basis of the evidence accepted by the tribunal. There is no legal complexity to the questions, although the tribunal should seek to express its conclusions in a clear way to show that it has considered the evidence relevant to the questions. The third question involves a further value judgment based on the evidence accepted. On its face, paragraph 339O of the Immigration Rules reflects the test laid down by the House of Lords in Januzi and requires the decision maker to consider the general circumstances prevailing in the country concerned and the personal circumstances of the person."

20. We reject Dr Chelvan's submission that the burden of establishing that relocation to a place identified by the respondent would be unduly harsh rests with the respondent as a result of its duty to cooperate, pursuant to the case of MM. In our judgment, MM merely confirms a duty of cooperation at the stage of assessment, for example the production of the country information reports; and does not impose a burden on the respondent or result in a formal sharing of the burden of

proof. If such a requirement was imposed a result of MM, we would have expected the CJEU has said so clearly. We do not accept that as a result of MM, AMM is no longer an authority that we should follow. We refer to paragraphs [219] to [225] of AMM:

219. The appellants submitted that in view of Article 8 "it is not for the asylum seeker to establish that he or she has no internal relocation alternative. A claim must succeed if the asylum seeker establishes the relevant risk unless the Tribunal is satisfied by the evidence before it (a) that there is a part of the country where there is no relevant risk and (b) that the asylum seeker can reasonably be expected to stay there."

220. Mr Eicke submitted that Article 8 of the Qualification Directive does not make any statement as to the procedural mechanisms by which the Member State "may determine" that there is an internal relocation alternative. Procedural rules are separately provided for under the Procedures Directive (2005/85) but no provision in support of the appellants' contention has been identified in that Directive. Furthermore, it was a general principle of European Union law that, subject to the principles of effectiveness and equivalence, Member States enjoy procedural autonomy enabling them to lay down the detailed procedural rules applicable to the enforcement of any EU law right.

221. That submission seems to us to be plainly right. It does not, however, dispose of the appellants' submissions on this issue, since they also relied upon domestic authority.

222. In Jasim v Secretary of State for the Home Department [2006] EWCA Civ 342 Sedley LJ said:-

"[16] The possibility of internal relocation is relevant to refugee and human rights claims because it may demonstrate that a fear of persecution or harm, though warranted by the applicant's experience in his place of origin, is not well-founded in relation to other parts of the state whose duty it is to protect him. But while the two issues – fear and relocation - go ultimately to the single question of safety, they cannot be decided in the same breath. Once the judge of fact is satisfied that the applicant has a justified fear of persecution or harm if returned to his home area, the claim will ordinarily be made out unless the judge is satisfied that he can nevertheless be safely returned to another part of his country of origin. Provided the second issue has been flagged up, there may be no formal burden of proof on the Home Secretary (see GH [2004] UKIAT 00248); but this does not mean that the judge of fact can reject an otherwise well-founded claim unless the evidence satisfies him that internal relocation is a safe and reasonable option.

[17] It is necessary to stress both adjectives - safe and reasonable. It is well established that relocation to a safe area is not an answer to a claim if it is unreasonable to expect the applicant to settle there. There may be no work or housing. He may not speak the language. Similarly, relocation to an area may be perfectly reasonable by these standards but unsafe, for example because of the risk of continued official harassment or - as in this case – revenge-seeking."

223. In AH (Sudan) v Secretary of State [2007] UKHL 49, Lord Bingham referred to what he had said in Januzi v Secretary of State for the Home Department [2006] UKHL 5:-

"The decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the

claimant to relocate or whether it would be unduly harsh to expect him to do so… There is, as Simon Brown LJ aptly observed in Svazas v Secretary of State for the Home Department [2001] 1 WLR 1891, para 55, a spectrum of cases. The decision-maker must do his best to decide, on such material as is available, where on the spectrum the particular case falls … or must depend on a fair assessment of the relevant facts [5]."

224. In AA (Uganda) v Secretary of State for the Home Department [2008] EWCA Civ 579 an Immigration Judge, on the reconsideration of an appeal following an earlier Immigration Judge's determination, dismissed the appellant's appeal because, although she had a well-founded fear of persecution in a particular area of Uganda, she had attended a particular church in the United Kingdom and the Immigration Judge saw "no reason why she could not also turn to the church in Uganda for similar support if the need arises". That finding was categorised as perverse, not being based on relevant (indeed) any evidence [12], [40] and [54].

225. We do not consider that the case law relied upon by the appellants comes close to establishing that the respondent bears the legal burden of proving that there is a part of the country of nationality of an appellant, who has established a well-founded fear in one area thereof, to which the appellant could reasonably be expected to go and live. The person who claims international protection bears the legal burden of proving that he or she is entitled to it. What that burden entails will, however, very much depend upon the circumstances of the particular case. In practice, the issue of an internal relocation alternative needs to be raised by the Secretary of State, either in the letter of refusal or (subject to issues of procedural fairness) during the appellate proceedings. In many cases, the respondent will point to evidence regarding the general conditions in the proposed place of relocation. It will then be for the appellant to make good an assertion that, notwithstanding those conditions, it would not be reasonable to relocate there. Those reasons may often be ones about which only the appellant could know; for example, whether there are people living in the area of proposed relocation who might identify the appellant to those in his home area whom he fears. The Secretary of State clearly cannot be expected to lead evidence on such an issue."

21. AMM provides a clear context and rationale for why, once the respondent has identified the proposed location, it is for the appellant to make good an assertion that notwithstanding general conditions, it would not be reasonable for them to relocate there. The paucity of evidence, as in the case before us, about general conditions in Shkodër, does not alter this analysis.

22. We do not accept that SC should be distinguished on the basis that it was not referred to by the Court of Appeal in AS; or because it was dealing with article 3 issues in the context of deportation; or because AS was the first case in which the Court of Appeal considered internal relocation through the prism of the QD.

23. We do not accept that the lack of reference in AS to SC means that the general guidance in SC is limited to analysis under article 3, in particular when there was specific consideration of internal relocation, including by reference to the well-known authority of Januzi v Secretary of State for the Home Department [2006] UKHL 5, [2006] 2 AC 246. We remind ourselves of paragraphs [36] of SC:

"36. I accept the submission that the evaluative exercise is intended to be holistic and that no burden or standard of proof arises in relation to the overall issue of whether it is

reasonable to internally relocate (see, for example Sedley LJ in Karanakaran v SSHD [2000] EWCA Civ 11 at [15] and [20]). That is distinct from the question whether there is any evidence upon which the evaluations could be made. This court cannot know what evidence, if any, was provided on questions (1) and (2) and whether the tribunal accepted or rejected any part of that evidence in coming to a value judgment which is accordingly not supported by evidence. It has not been demonstrated to us that the conclusions of fact are inferences that could properly be drawn from materials that were available. It is accordingly wrong to say that there were clear factual findings to which the test of reasonableness was applied or that the tribunal had sufficient factual material to undertake an holistic assessment for the purpose of the third question."

24. We conclude the burden of proof remains on appellant, where the respondent has identified the location to which it is asserted they could relocate, to prove why that location would be unduly harsh, in line with AMM, but within that burden, the evaluation exercise should be holistic. An holistic approach to such an assessment is consistent with the balance-sheet approach endorsed later in SC at paragraphs [40] and [41]:

"40… is it unduly harsh to make SC move to another place in Jamaica where he will be safe, rather than letting him stay in the UK? The phrase 'unduly harsh' imports a value judgment of what is 'due' to the person. It is possible to postulate that what may be an unduly harsh consequence for one person may not be an unduly harsh consequence for another person where the latter is a person who represents a danger to the community because he has committed serious offences. This is not to allow public interest considerations to infringe human rights; there would be no infringement of article 3 in the new location. I am accordingly persuaded that SC's criminality should have been considered and it was not.

41. Does this analysis vitiate the finding of the FtT? The tribunal did not expressly weigh SC's criminal activity in the balance (see, for example the judgment at [38]), although the judgment is informed by the tribunal's view of SC's criminal conduct and, ultimately, by the conclusion that the traumatic experiences of SC's childhood are partially to blame and that he can be rehabilitated. The UT found that some of the factors considered by the FtT in assessing reasonableness (including criminality) were implicit but that is not in itself a satisfactory conclusion. It is accordingly unclear what the tribunal weighed in the balance. The FtT would have been better advised to structure the consideration of internal relocation differently. A useful structure would be to list all the factors pointing towards internal relocation being unduly harsh and then list those factors pointing against internal relocation being unduly harsh. A paragraph should follow which explains the balancing exercise undertaken, the conclusion and the reasons for the conclusion. This kind of balance sheet approach has become a commonplace in questions of this kind and might usefully be adopted by the FtT when this question arises."

25. Setting aside the issue of criminality, which is not relevant in this appeal, we followed a balance-sheet approach in the holistic assessment. An over-emphasis on the overall burden of proof can be a distraction from that holistic assessment.

26. The appellant's final assertion fails as a result of the fact that the QD has been accurately transposed by paragraph 339O of the Immigration Rules.

27. The findings preserved relate to the following. The appellant is a bisexual woman who was at risk, as a result of her sexual identity, from her father, in four identified

locations already referred to in this decision. Her father had been abusive to both the appellant and members of her family. There had been a finding that domestic violence was widespread in Albania, with societal discrimination to the extent that it was said that the appellant might choose to keep her sexual identity secret, even if she were not at risk from her father or other family members in Shkodër.

28. Although the appellant was not called to give evidence in the context of Dr Chelvan's submission that the burden of proof was on the respondent, he stated that the appellant would not open about her sexual identity in Albania; and that she would not have any difficulty in obtaining employment or housing. Her concealment meant that, when considering whether she could lead a 'relatively normal life', which was a consideration in AS, (paragraph [31]), the answer was that she could not, but would instead be forced to live a 'half-life.' In particular, the appellant would be unable to develop a private life with friends. She would be returning as a lone woman without family connections, seeking to integrate into a society in which there was discrimination against people based their sexual identity. The FTT's findings about the appellant's mental health combined to make her internal relocation to Shkodër unduly harsh.

29. For the purposes of paragraph 276ADE(1)(vi) of the Immigration Rules, and whether there were very significant obstacles to the appellant's integration into Albania, once again the starting point was that she was a single woman who would be returning to Albania without family connections, where there was societal discrimination and where she had never lived openly as a bisexual woman. The authority of BF, relating as it did to gay men, was of limited assistance, as was the respondent's most recent Country Policy and Information Note ('CPIN') - Albania: Sexual orientation and gender identity (April 2019). While Dr Chelvan objected to its admission as new evidence, he was content to deal with it in submissions, noting that the only additions since the last version of the CPIN (version 4) which had been considered by the FTT, were as a result of BF, which it was open to us to consider.

The respondent's submissions

30. As a starting point, Mr Clarke submitted that societal discrimination within Albania did not amount to societal persecution. Whilst the appellant said that she would feel compelled not to disclose this aspect of her identity as a result of shame and fear; in relation to obtaining employment and housing, the need to disclose or discuss her sexual identity would never arise; and in relation to friendships and social networks, the appellant was hardly likely to disclose aspects of her identity to those who did not share a common acceptance of those aspects. In essence, she would be choosing not to share those aspects of her life, in circumstances where she would not otherwise naturally have done so, rather than being compelled to conceal aspects of her identity.

31. In terms of the appellant's personal circumstances, while she had been kicked out by her family, there was no further detail, in terms of evidence about her claim to be compelled not to disclose aspects of her identity; there was no updated medical evidence beyond the evidence provided to the FTT in July 2017; no evidence about

what friendships in Albania had been retained and what not; and no evidence, beyond a bare assertion, that she would feel compelled to live almost as a recluse in Albania.

32. Considering the wider objective evidence, the respondent had referred to the 2019 CPIN to assist the appellant - in fact, what it demonstrated, as did BF, was the paucity of any evidence about prevailing country or regional circumstances for women, as opposed to gay or bisexual men in Albania. In essence, there was simply a dearth of evidence; either in relation to whether it would be unduly harsh to relocate; or by reference to the test under paragraph 276ADE(1)(vi) or article 8, which Dr Chelvan accepted was a different, more difficult test for the appellant to satisfy, as to any obstacles, let alone very significant ones, to the appellant's integration in Albania.

Discussion and conclusions on internal relocation and obstacles to integration

33. The appellant has relied only on the evidence before the FTT in July 2017, nearly 2 years ago, despite being aware since November 2018 that this Tribunal would remake the decision and that in doing so, she was able to apply to adduce whatever additional relevant evidence, particularly more up-to-date evidence, she wished. Instead, she has relied upon the narrow legal point about where the burden of proof lies in seeking to argue that as the respondent has the burden which it has not discharged, that internal relocation to Shkodër must be unduly harsh. As we have already indicated, we reject the appellant's submissions on the burden of proof, so that we are left with limited evidence on which to make the assessment, albeit we have done so as best we can using a holistic approach, within the framework of a 'balance sheet' analysis.

34. Focusing on the appellant's personal circumstances, she will be a lone woman relocating to a city, Shkodër, with which she is not familiar; without family connections, being estranged from her family; fearing her father and with, at best, only telephone contact with her mother (as recorded in her evidence at paragraph [11] of the FTT decision).

35. Beyond that, the evidence about the appellant's personal circumstances, which are relevant to the issue of whether it would be unduly harsh for her to relocate to Shkodër, is extremely limited. Her written witness statement for the FTT includes four brief paragraphs on the inability to internally relocate (pages [88] to [89] of the appellant's bundle). She recites her fear that her father will attempt to find and kill her. The FTT has already rejected the ability of the appellant's father to locate her outside the four specified cities in Albania ([31] of the FTT decision). She further asserts that she could not be open about her sexuality. The FTT also found that the appellant would be able to find employment, specifically as a shop worker. Dr Chelvan does not dispute that she would also be able to obtain accommodation, and we find that with an ability to find work, she would be able to find accommodation in Shkodër.

36. Another facet of the issue of whether relocation to Shkodër would be unduly harsh is the appellant's ability to establish friendship groups and social networks. We

considered whether the appellant's history of localised persecution from her father (who would not be able to persecute her in Shkodër); her depression or any associated mental health issues; or societal attitudes more generally would hinder her ability to do so.

37. Dealing with the connected issues of past, localised, persecution, and depression, we have considered the expert report of a consultant psychiatrist, dated 22 June 2017, at pages [71] to [82] of the appellant's bundle. The expertise of the consultant is unchallenged. While brief, the report describes the appellant as suffering from a depressive episode, with fleeting suicidal thoughts; poor concentration; anxiety; low mood; disturbed sleep; an inability to enjoy life; and a fear for the future ([75] of the appellant's bundle). The report makes a number of other brief points: first, that with antidepressants with which the appellant was being treated in June 2017, and further psychological treatment, the appellant was likely to recover with a period of a year from the date of the examination i.e. her recovery would be complete by 20 June 2018, a year ago ([76] of the appellant's bundle). Second, her condition was likely to get worse if she were deported to Albania against her wishes, as she has an understandable fear of returning there; with an increased risk of suicide because she is terrified of her father and other members of her family.

38. The author of the report did not consider the issue of internal relocation to another part of Albania, where, objectively, the appellant would not be at risk of adverse attention from relatives, and in the context of the appellant having found employment and accommodation. There is no update on the appellant's current medical condition, and we can only assume that she has recovered from her depressive episode, given the prognosis of recovery within a year. Any risk of recurrence of mental illness, associated with her fear of her father and cousins, must be considered in the context of that recovery and internal relocation to somewhere objectively beyond the reach of her father and cousins. There is no evidence that after a period of recovery, the appellant would continue to suffer a subjective fear (as opposed to objectively justified fear) of discovery by her father, which would result in further illness.

39. We have also considered the impact of wider societal discrimination against bisexual women in Albania; to what extent, if any, it would impact on the appellant's ability to form friendships and social networks, given her history of depression. We remind ourselves of the Country Guidance case of BF. We accept the submission that, relating as it did to the prevailing circumstances for gay men in Albania, it was of limited assistance to the question of whether it was unduly harsh for bisexual woman to return to Albania. Nevertheless, it recited, at paragraph [2], the only (limited) general Country Guidance case of direct relevance, IM (Risk, Objective Evidence, Homosexuals) Albania CG [2003] UKIAT 00067:

"The existing country guidance is IM (Risk, Objective Evidence, Homosexuals) Albania CG [2003] UKIAT 00067 ("IM") which can be summarised as follows:

(i) Other than two incidents in 1994 and 2001, there was no evidence to suggest that there is generalised treatment of homosexuals in Albania which is of a persecutory nature or in breach of their human rights ([5]);

(ii) Equally, there is no evidence apart from a single incident in 1994 that homosexuals in Albania are treated adversely by the police although there is evidence that those detained and arrested by police on suspicion of criminal activity may be ill-treated ([5] and [6]);

(iii) There is therefore "no country background evidence which supports a reasonable likelihood that homosexuals as such in Albania are subject to any action on the part either of the populace or the authorities which would amount to persecution for the purposes of the Refugee Convention or would be in breach of their protected human rights."

40. We also considered the Country Guidance case of TD and AD (Trafficked women) CG [2016] UKUT 00092 (IAC), and in particular, paragraph [111]:

"111. As to the social consequences of a past trafficking experience we note the findings in AM & BM about social exclusion of women labelled as kurva, in the context of the tenacity of Northern Albanian traditions. It might be thought that the increased migration from the countryside to the cities might lead to a weakening in such belief systems, as extended families leave the land and break down into smaller, more independent units. Surprisingly we were shown no evidence to that effect, and in fact it was suggested by Professor Haxhiymeri that such migration – primarily from North to South – has had the opposite effect, of transporting conservative Geg social mores into the more liberal south. The importance of the family unit as a social and economic construct was emphasised in all the evidence before us. We accept her evidence that women living on their own are immediately identifiable as being on the 'outside'; even if the details of their history are not known, work colleagues and neighbours may view them with some suspicion. In some cases that suspicion will escalate to open prejudice and hostility. We therefore find no reason to depart from the general conclusions on this matter drawn by the Tribunal in AM & BM. Women living on their own are likely to be socially distinct. Whilst discrimination and stigma certainly exist they will not generally constitute persecutory "serious harm" or breach Article 3, but this it nevertheless a factor to be considered cumulatively when assessing whether internal flight is reasonable for any given appellant."

41. We find that, being situated in the north of the country, the appellant's relocation to Shkodër could result in at least initial suspicion on her return there (noting TD), and the 2019 CPIN refers, at section 5 ('societal treatment and attitudes') to LGBTI individuals continuing to experience discrimination. While the CPIN reported there to have been a drastic change since 2010 and the adoption of a non-discrimination law in Albania, homophobic sentiments remain very high (as evidenced in a survey conducted by a US-based NGO, albeit its sample size, sample location and general methodology is unclear).

42. On the basis of the limited evidence before us, noting that the appellant had not been called to give evidence, and had not sought to produce any updated witness statement, we proceeded on the assumption that the appellant would, on relocation, be viewed with some suspicion and curiosity and may even be the target of homophobic, non-physical abuse, by non-state actors, as a result, although even this is a tentative assumption, based on the limited information we have about the survey samples and methodology referred to in section 5 of the CPIN. However, we find that there is simply insufficient evidence to conclude that even faced with that level of discrimination, the appellant would not be able to avail herself of state protection, for example from local police, in the event that she suffers from

harassment, noting the CPIN's analysis of protection at section 2.4.3 of the CPIN, which discusses the implementation of legislation against hate crimes:

"2.4.3 Where the person's fear is of persecution or serious harm by non-state actors (including rogue state actors), there is, in general, protection in law and avenues of redress, although the situation in areas outside Tirana must be considered carefully and on the particular evidence presented. Anti- discrimination laws in Albania expressly protect LGBT persons and make hate crimes a criminal offence. As mentioned above the Albanian government has passed some of the most progressive LGBT laws in the region"

43. While we were conscious that the appellant would be relocating outside Tirana, there was no evidence that the authorities in Shkodër would be unwilling or unable to assist.

44. We also accept the respondent's submission that the appellant's potential ability to establish social networks and friendship groups with people in Shkodër who would be accepting of her bisexuality is likely to be transformed by social media, and that this will significantly mitigate the risks of her isolation. Put another way, the ability to reach out to others, while resettling in a new location, goes to answer, at least in part, the question of whether the appellant would feel compelled to live in social isolation. We find that the appellant's ability to establish social networks and friendship groups; to access police assistance, if needed; and her ability to access housing and employment, are all significant mitigating factors in considering the appellant's history of depression and the extent to which she might be isolated as a result.

Conclusion on internal relocation

45. Adopting the balance-sheet approach as part of an holistic assessment, we have referred already, on the one-hand, to societal attitudes towards same sex relationships, albeit not beyond the level of a risk, to the lower standard, of non-physical harassment; initial suspicion and curiosity; the fact that the appellant would be relocating to Shkodër, a location with which she was not familiar; and her history of depression and fear of past ill-treatment. On the other hand, we take account of the appellant's undisputed ability to access housing and get a job; and establish friendship groups and social networks; as well her recovery from depression and lack of evidence of recurrence of that condition; and access to police assistance, if necessary.

46. Based on the very limited evidence presented by the appellant, we conclude that her internal relocation to Shkodër would not be unduly harsh. The personal support that the appellant could access through friendship groups and networks, in the setting of access to work and accommodation would ultimately outweigh the challenges of wider societal attitudes and initial curiosity or suspicion. In short, the appellant would not be faced with the option of living as a recluse or living some kind of 'half-life' as the only means of living in Shkodër. In the circumstances, her relocation there would not be unduly harsh, even if she felt unable, because of wider societal attitudes, to be open about her sexual identity.

47. For the same reasons, the obstacles to the appellant's integration in Shkodër, of societal attitudes towards same sex relationships, initial suspicion and curiosity; and the appellant's history of depression and her fear of past ill-treatment, would not be very significant, in light of the mitigating factors which would mitigate her risk of social isolation and her ability to integrate into life in Shkodër.

48. In the light of our finding that it would not be unduly harsh for the appellant to internally relocate to Shkodër, and the absence of evidence that she would not be at unprotected risk, the protection claim must fail.

49. Similarly, in light of the appellant's ability to integrate in Shkodër, the appellant does not meet the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules, for the purposes of her private life. The FTT had carried out an article 8 assessment of the appellant's private life, outside the Immigration Rules, at [57] to [61] of its decision. We adopt that part of the FTT's analysis (not the overall decision), noting that when considering the question of proportionality, the mitigating factors which reduce the risk of social isolation, already outlined above, are an important weight in the proportionality of the respondent's decision to refuse leave to remain in the United Kingdom.

Notice of Decision

50. The decision of the First-tier Tribunal involved an error of law, such that it was set aside. We re-make it by dismissing the appellant's appeal.

Signed Date 7 November 2019

J Keith

Upper Tribunal Judge Keith

TO THE RESPONDENT
FEE AWARD

We have dismissed the appeal and therefore there can be no fee award.

Signed Date 7 November 2019

J Keith

Upper Tribunal Judge Keith

ANNEX: ERROR OF LAW DECISION

Heard at Field House
On 2 October 2018
(Given orally)

Decision & Reasons Promulgated

23/11/2018

Before

THE HON. LADY RAE
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE DAWSON

Between

MB
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Chelvan, Counsel instructed by S M A Solicitors
For the Respondent: Mr T Lindsay, Home Office Presenting Officer

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008.
As this case involves a protection claim I make an order whereby unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

1. The appellant has been granted permission on five grounds challenging the decision of First-tier Tribunal Judge Bartlett who dismissed the appeal by the appellant, a national of Albania against the Secretary of State's decision dated 10 April 2017 refusing her asylum claim based on her accepted bisexuality and the consequent hostility from her father who had threatened to kill her.

2. The appellant had left Albania in February 2017 after a period of study at the University in Tirana. She reached the United Kingdom in March that year.

3. The Secretary of State considered that protection was available to the appellant by the authorities and, furthermore, also considered that internal relocation was available as the fear was confined to specified areas in Albania, including Tirana, Durres and other locations in the south of the country where the appellant had been raised. It was considered that it would not be unreasonable for the appellant to relocate to Shkoder or another location in Albania. Furthermore, the Secretary of State considered that paragraph 276 of the Immigration Rules was not made out and there would be no breach of Article 8.

4. In reaching his conclusions, the judge accepted the appellant's sexuality and, in respect of his other findings, rejected the Secretary of State's claim that Section 8 of the 2004 Act applied. It had been asserted the appellant had not claimed asylum immediately upon her arrival in the United Kingdom.

5. The judge reached the following further conclusions at paragraph 30 of his decision:

> "I accept that the appellant's father was abusive to her mother, the appellant and her siblings. I find the appellant credible in this regard and this is supported by the medical report. I find that domestic violence is widespread in Albania and a statistic often cited is that one in 3 women in Albania will experience domestic violence."

He continued:

> "I find that the appellant's account that her father would wish to do her harm is consistent with Albania suffering from pervasive domestic violence and patriarchal attitudes about ownership of women. Therefore I find that the appellant is at risk of serious harm from her father and that this amounts to persecution. I accept that the appellant is extremely scared of her father. I consider that this may have influenced her view so that her subjective fears are greater than objective reality. I do not accept that the appellant is at risk of harm from her cousins."

And at paragraph 31:

> "I do not accept that the appellant's father has the power or resources to seek the appellant throughout Albania. The appellant has not provided evidence to establish that he is a rich man or a man with any connections to the police, organised criminals or any others with influence and power who could pursue her throughout Albania. Therefore I considered that the risk of the appellant facing harm at the hands of her father arises where he is located which is Gjirokaster. I accept that she has family in other parts of Albania comprising Tirana, Tepelele, Durres and Volore. I accept that these family members might inform the appellant's father that they knew where she was if this was the case and therefore the appellant cannot relocate to those areas. However I must consider whether she can internally relocate elsewhere in Albania."

6. The judge then proceeded to consider the treatment of LGBT individuals by Albanian society and reached this conclusion at paragraph 39 of his decision:

> "Taking all of this into account and the objective evidence set out in the appellant's bundle I conclude that the situation in Albania is one where there is widespread discrimination and societal disapproval of bisexuals. I do not accept that this amounts to persecution."

And at paragraph 40:

> "Therefore the appellant would not be required to conceal her sexuality as a result of fears of persecution; her family is aware so there can be no concealment and wider society would not punish her. Instead she would conceal it because of feelings of shame and concerns about suffering prejudice and discrimination."

7. The judge then turned to consideration of sufficiency of protection and concluded at paragraph 45:

> "I find that the background information provided by the appellant sets out that the police have provided protection to LGBT individuals in numerous instances, it also identifies that in some instances they have failed to provide protection. The ILGA: Europe report itself identifies 10 cases in 2012 and in most cases where hate crimes against LGBT individuals were reported to the police some action was taken. Therefore I do not accept that the appellant has established even to the lower standard of proof that the state authorities would be unable or unwilling to provide sufficient protection."

And as to internal relocation at paragraph 46:

> "… she may keep her sexuality a secret from employers, landlords and friends. I consider that this does not of itself make internal relocation unduly harsh for the appellant. The appellant is clearly a bright young woman, she was studying at Tirana University before she abandoned her degree. I recognise that she has little employment history. However I consider that she would be able to study for another degree at a different university in Albania away from where her family is located. In addition I considered that she would be able to find work such as shop work without having any family connections."

8. In considering whether it would be unduly harsh for the appellant to relocate, the judge failed to indicate the destination he had in mind, an aspect candidly acknowledged by Mr Lindsay in his submissions. The judge therefore considered this aspect in a vacuum. He did not identify which university the appellant might attend or the city where it might be. No reasons were given why the judge concluded that the discrimination and the disapproval which might lead the appellant to keep her sexuality secret would not be unduly harsh. The question the judge should have asked, once the destination was decided upon, was whether it would be reasonable for her to live in such a place that might require her to keep her sexuality secret from landlords, employers and friends. This would need to be considered in the context of her mental health in respect of which the judge was satisfied the appellant was depressed. We find this failure to give reasons sufficient for the decision to be set aside and for it to be remade.

9. The findings of fact by the judge are to be preserved as to the risk faced by the appellant from her father and the reach of that risk to be identified by locations which we have referred to above. Accordingly, we are satisfied that ground 2 is made out to the extent that it challenges the lawfulness of the conclusions on internal relocation. There is therefore no need to consider the remaining grounds. We now give directions for the remaking of this decision.

10. In our view this decision can be properly remade in the Upper Tribunal in the light of the findings that have been preserved. We are also aware as indeed are Mr Lindsay and Mr Chelvan that there is a pending Country Guidance case on the situation for LGBT individuals in Albania which is listed for hearing on 24 October. The case will be listed for hearing decision once that guidance is published.

Signed Date 21 November 2018

UTJ Dawson

Upper Tribunal Judge Dawson