



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA 06303 2013

THE IMMIGRATION ACTS

**Heard at Field House
On 16 October 2013**

**Determination Sent
On 31 October 2013**

Before

**UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE E B GRANT**

Between

DAVIDE BIBA

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Anderson, solicitor from Sutovic & Hartigan
For the Respondent: Ms A. Everett, Senior Home Office Presenting
Officer

DETERMINATION AND REASONS

1. We allow the appellant's appeal. These are our reasons. The appellant is a citizen of Albania who appealed unsuccessfully to the First-tier Tribunal the decision of the respondent to remove him from the United Kingdom. It is his case that he is a refugee, or otherwise entitled to international protection.
2. The appeal was heard by First-tier Tribunal Judge Pacey on 1 August 2013. He clearly believed the appellant's evidence that he is a Christian, brought up in Italy by his Albanian mother separate from his father who was returned by the Italian authorities to Albania. The family were reunited when the appellant's mother returned to

Albania with the appellant and his siblings whereupon the appellant was mistreated and persecuted by his father who threatened to kill the appellant on account of his Christian faith. His mother sent him away to the United Kingdom for his own safety. The respondent did not dispute the appellant's Christianity.

3. Most of the key findings are set out at paragraphs 14-19 of Judge Pacey's determination. At paragraph 26 of the refusal letter the respondent accepted that the appellant would be at risk on return to his home area in Albania for a refugee convention reason but that he could be reasonably expected to internally relocate. This admission was upheld by Judge Pacey at paragraph 11 of the determination. This issue was not reargued before the First-tier Tribunal. The appellant's case before the First-tier Tribunal concerned only the appellant's ability to internally relocate in Albania and obtain state protection. It was the appellant's case that the respondent had not acted in the appellant's best interests pursuant to section 55 of the UK Borders Act 2007. The First-tier Tribunal further decided the respondent's decision was not in accordance with the law because she had failed to consider section 55 properly and allowed the appeal to the extent that it remained for the respondent to decide the application in accordance with the law. This is still outstanding.
4. The judge accepted that it would be unduly harsh for the appellant, as a minor, to relocate anywhere in Albania. This was conceded by the respondent. The judge went on to find that the appellant could relocate in Albania together with his mother and together they could obtain state protection.
5. There was no evidence before the judge that the appellant's mother would, could or was in any position to relocate with the appellant. There was no consideration of her responsibilities to the appellant's siblings. The judge assumed that the appellant's mother would relocate with him within Albania. The assumption was not supported by the evidence and so, it was said, the judge erred in law.
6. The judge misapprehended the evidence placed before him. He recorded at paragraph 12 of his determination that it was strange that the appellant's mother had returned to an abusive husband but there was no evidence before the judge that the appellant's mother had ever been abused by her husband before they resumed cohabitation. Thus there was no evidence to support a finding that she had returned to a violent man. The evidence was that when the appellant's mother challenged her husband for trying to make the appellant change his religion, then he beat her. The appellant's evidence was that his father beat his mother once she tried to stop him changing the appellant's religion.
7. The evidence before the judge was that the appellant's father had been forced to return to Albania by the Italian authorities. The family

remained in contact by telephone and visits during which the appellant's mother conceived his younger siblings.

8. The judge failed to consider the appellant's siblings when finding the appellant could relocate in Albania with her. She would either have to leave them with their father or relocate with the appellant as a single mother of three children. She would be exposing the younger two children to risks where none were disclosed before the judge.
9. We find that the misapprehension of the facts taints the basis for the judge's decision which is predicated upon an assumption that the appellant could relocate in Albania with his mother.
10. Before the First-tier Tribunal the respondent submitted that the appellant's family apart from the father could relocate with the appellant. However this submission had no basis in evidence. Contrarily, we find that there was no evidence that the appellant's mother would leave her husband to make a home for the appellant away from him or that such a course would be practicable if the appellant's mother was so inclined. The respondent did not comply with her tracing duties following KA (Afghanistan) v SSHD [2012] EWCA Civ 1014 and accordingly has no knowledge of the appellant's mother's situation and motivations and whether she could relocate with the appellant. Clearly she did not relate in Albania. Instead she sent the appellant to the United Kingdom.
11. The judge found against the appellant on the issue of state protection but the finding about state protection was predicated on the basis the appellant was with his mother and not alone. As such the findings on state protection are fatally flawed. At paragraph 14 of the determination Judge Pacey records "I entirely accept that it would not be reasonable to expect the appellant (a minor) alone to relocate to another part of Albania, and this was helpfully conceded by the presenting Officer". It having been conceded by the respondent that the appellant could not return to Albania alone there is no need for us to reconsider state protection which might be available to the appellant. Furthermore we find that it would be unduly harsh for the appellant to return to Albania in order to relocate as a minor, alone.
12. Accordingly we set aside and remake the determination.

Decision

The decision of the First-tier Tribunal is set aside.

The appellant's asylum appeal is allowed on asylum and humanitarian protection grounds.

Signed

Elizabeth Grant

Deputy Judge of the Upper Tribunal

28 October 2013.