Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05087/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5 November 2020	**On 31 December 2020**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

E U
(ANONYMITY ORDER IN PLACE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Chakmajian, instructed by Wimbledon Solicitors
For the Respondent: Ms C Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of the Secretary of State made on 17 May 2019 to refuse her asylum and humanitarian protection claim. Her appeal against that decision to the First-tier Tribunal was dismissed in a decision promulgated on 3 October 2019. For the reasons set out in my decision of 19 February 2020, a copy of which is attached, that decision was set aside as it involved the making of an error of law.

© CROWN COPYRIGHT 2020

The appellant's case

2. The appellant's case is that her father physically abused her from a very young age. He was also abusive towards her mother and her brother, was often drunk and although she was able to attend university in Durres, that was paid for by her uncle and aunt (maternal uncle). After graduating from university, she returned to live with her parents when her father began to physically and sexually abuse her. The sexual abuse persisted but eventually on one occasion her mother walked in on the appellant and her father, pulled him off and she ran out of the house and went to stay with a friend. She returned briefly to pick up her belongings and then went to say with her uncle where she remained for three weeks. During that time her father came to look for her but was told that she was not there. She was able to raise money with the help of relatives, travelling to Italy where she remained for a few days, then travelled to France, attempted to travel to the United Kingdom using a forged Italian ID card. She was stopped by French Immigration who then released her. She returned to Italy where she obtained another forged Italian ID card and went to Spain and from there travelled to the United Kingdom.

3. The appellant has been able to remain in contact with her mother and with some friends by telephone. They have also written to her.

4. The appellant maintains that she would be at risk of being subjected to the same abusive behaviour or killed by her father were she to return and that she would not be safe anywhere in Albania as he would be able to track her down. She also believes that the Albanian authorities would not provide her with sufficiency of protection.

The Respondent's case

5. The respondent's case is set out in the refusal letter of 17 May 2019, subject to a major concession made in submissions. The Secretary of State now accepts that the appellant was subject to the physical and sexual abuse as described. The Secretary of State does, however, rely on Section 8 of the 2004 Act drawing inference to the appellant's failure to claim asylum en route. The Secretary of State did not consider either that, as a lone woman, she would be at risk having had regard to DM (Sufficiency of Protection – PSG – Women - Domestic Violence) Albania CG [2004] UKIAT 00059, TD and AD (Trafficked women) CG [2016] UKUT 0092 and AM and BM (Trafficked women) Albania CG [2010] UKUT 80.

6. The Secretary of State noted that the appellant had been supported by her uncle and aunt whilst at university, the cousins were willing to lend her money to travel to the United Kingdom and there was no reason given as to why they would not be able to support her on return. The Secretary of State considered that the appellant could return to her locality and uncle's family and carry on with her life as before, noting that she was well-educated who had completed university, performed voluntary social work and had lived independently away from her family for years at university. She considered also that there would be a sufficiency of protection for the appellant, having had regard to Horvath [2000] UKHL 37 noting that things in

Albania were improving. The Secretary of State noted [64] that although the appellant thought her father would be arrested he would be released within days and able to kill her, the background demonstrates that Albania has a functioning police force and it was speculative that her father has any continuing interest in her or that he would be released from police custody. She noted also that a police response could be escalated to the independent ombudsman who would as shown be able to take action if necessary. She noted also that there had been significant improvements in the treatment of domestic abuse there being evidence of arrests and prosecutions.

7. The Secretary of State noted that there were ten shelters in Albania and five women's centres in major cities which provided practical help and advice for victims of gender-based abuse. The Secretary of State noted that the physical abuse to the appellant had ceased when she went to university, it was therefore speculative that he would have any continued interest in her should she relocate to another area in Albania [82] and that it was unlikely that he would be able to do so in any event. It was noted that the victim's civil registration office would be the NGO's address rather than the shelter address so that access through the civil registration would not compromise her location. (Note to self: this is likely to be temporary only).

8. The respondent also considered that the appellant's removal would not be in breach of Article 8 but the refusal letter was written before it became apparent that the appellant is pregnant expecting a child early next year.

The Hearing on 5 November 2020

9. I heard evidence from the appellant, who gave evidence through an interpreter as did a supporting witness, Mr L.

10. The appellant adopted her witness statement confirming details she had given in her asylum interview at Q24 as regards relatives in Albania. She confirmed she had an aunt in Italy and other relatives in nearby villages. She confirmed that she had been taken to her interview by solicitors but that she had not been told that she could amend it by the Home Office. She accepted she had confirmed that it was all correct but she had not quite understood what had been meant by "state officials" and that this had been put in her statement. She accepted that had only been prepared for the appeal. She said that she had no other family outside Albania apart from the aunt in Italy and what she had meant (see witness statement of 17 September 2019) was that there would have been no family who had been able to come to the United Kingdom to pursue her and they could not come to the UK without an EU passport.

11. Asked about what she had said to the expert psychiatrist about having no friends in the United Kingdom she said what she had said to him was that she had distanced herself from Albanians as she did not want to get close to somebody who might have connections with her family. She confirmed that the father of her child is Albanian but was not able to say whether he was a member of the Albanian community, by which I meant whether he worked and socialised with other Albanians. She said that they had met in a café but she could not recall exactly where but that they had not

spoken since she told him she was pregnant. When asked, she refused to give his name and said that he had told her in the past he did not want his name used in any case. Even after it was explained to her that she could write it down and it would not be necessary and that this was an enclosed court, she declined to provide his name. She said that the friend who accompanied her that day was not the father of her child.

12. The appellant said that she had met Mr L at a café near London Bridge but again she could not recall the exact name.

13. The appellant confirmed that she is in contact with her mother, who goes to visit the appellant's friend, MH and they speak by telephone.

14. The appellant said that she had borrowed money from different extended family members and also from friends. She had not told them that she was going to leave and had asked them for small amounts of money each as they would not have been able to give big sums.

15. The appellant said that her uncle who had paid for her studies was the only businessman in the family by which she meant that he had some people who worked for him in construction. He was the only person who was in "business" which was not what was meant by being in business in the United Kingdom. She said the rest were in simple jobs. When asked that she had not included her paternal cousin's husband who is a police officer, in those to whom she referred when asked if she had family members who were in a government job. She said he was not a close relative although they had seen him. When they had married, they had, as tradition requires in Albania, visited her family house and they had seen him on other occasions at family gatherings. She said he is in the police in Tirana and is a municipal police officer.

16. The appellant confirmed that when studying she had stayed at university for three years, living in shared accommodation with friends one of whom is Migena. She said that after university she had submitted a CV and obtained a job in a private school in Tirana but that she had not been able to take up the post because of what happened to her and her need to flee the country. She said her home area is about twenty to 25 minutes' journey from Tirana but an hour or so from Durres where she had gone to university. Although her father had worked across the country she was not aware of him ever having visited Durres while she was there although she had thought he might have been but had not bothered to see her. He had not attended her graduation.

17. The appellant said that she had taken antidepressants while she was in Albania and had not been referred to a psychologist as they were not available on public health system but were private. She cannot afford that. She was not sure if the drug she had been prescribed was sertraline which she had been prescribed in the United Kingdom. She had said that she had taken that and had stopped taking it after the

first two weeks as she felt bad and stopped and had not taken it while she was pregnant.

18. In re-examination the appellant said that Mr L did not know the details of her case.

19. In response to my questions the appellant said that her mother had talked to her about her father in conversations and that he was wanting to know where she is.

20. I then heard evidence from Mr L, who adopted his witness statement. He also gave his evidence through an interpreter.

21. After some confusion Mr L explained that the appellant lives in the address she has given in Ilford. He confirmed that he had lived elsewhere but that the property in Ilford was in his name. He confirmed that he paid rent for it. He also said he would not be able to support her if she returned to Albania given that in the current circumstances he had not been earning much. Mr L also explained that he had been granted 30 months' leave to remain and had made an application within time for further leave to remain which was outstanding. He said that he had not met the appellant's former partner, the father of her baby.

Submissions

22. Ms Cunha relied on the refusal letter subject to a concession that it was no longer contested that the applicant had been subjected to sexual and physical abuse. She submitted that the appellant could return to Albania, either to Tirana or to Durres where she had studied. She submitted that she was highly educated, had shown that she had been able to get a job in the post, that she was less likely to self-harm now given that she was pregnant and would soon have a child and would be able to be self-sufficient on return.

23. Ms Cunha submitted that the appellant's explanation for not claiming outside asylum before she came to the United Kingdom made little sense. She also submitted that there are state-run NGOs which would be able to assist the appellant, who would also get the assistance of IOM (see **AM**) to help her to reintegrate. She submitted further that in reality she would not be at risk of trafficking on return nor, even returning as a single woman without a male figure and as an unmarried mother would she be at risk. She submitted further that there was insufficient evidence to show that the trauma and PTSD that the appellant had suffered was sufficient to engage Article 3.

24. She submitted that there was insufficient evidence to show that the appellant's father would pursue her, and in any event there would be a sufficiency of protection for her from the police. She submitted also that she would get the necessary assistance with her mental ill health as she had in the past as shown by the evidence she had produced and accordingly the appeal ought to be dismissed.

25. Mr Chakmajian relied on his skeleton argument submitting that on the basis of the objective evidence there was still difficulty that the appellant would face given that

there is still a stigma attached to domestic violence. He submitted that on the particular facts of this case there would not in reality be a sufficiency of protection for this appellant and that she would as a result of the circumstances in which she found herself be more at risk as to be trafficked in future. He submitted that being the mother of an illegitimate child would not make any difference to this risk and that there was in Albania a paucity of funding for mother and baby units let alone for the victims of sexual violence.

26. Mr Chakmajian asked me to note that there was still a considerable degree of evidence to show that there was still a risk to the appellant from her father. There was the evidence, not challenged, that her mother had told her he is still looking for her and thus the appellant would not be able to tell anyone if she went back to Albania. There was in reality a risk that she would be found and the police would not be in a position to protect her.

The Law

27. It is for the appellant to prove, on the lower standard, that she is at risk on return to Albania of serious harm such as would constitute persecution, entitle her to humanitarian protection or engage article 3 of the Human Rights Convention.

28. The appellant's fear in this case is of non-state agents. As was noted in AW (Sufficiency of Protection) Pakistan [2011] UKUT 31, in Bagdanavicius the House of Lords at [2005] UKHL 38 left undisturbed the proposition set out by Auld LJ on real risk and sufficiency of protection in the Court of Appeal [2005] EWCA Civ 1605. These propositions are in the following terms:

> "54. Summary of conclusions on real risk/sufficiency of state protection.
>
> *The common threshold of risk*
>
> 1) The threshold of risk is the same in both categories of claim; the main reason for introducing section 65 to the 1999 Act was not to provide an alternative, lower threshold of risk and/or a higher level of protection against such risk through the medium of human rights claims, but to widen the reach of protection regardless of the motive giving rise to the persecution.
>
> *Asylum claims*
>
> 2) An asylum seeker who claims to be in fear of persecution is entitled to asylum if he can show a well-founded fear of persecution for a Refugee Convention reason and that there would be insufficiency of state protection to meet it; Horvath [2001] 1 AC 489].
>
> 3) Fear of persecution is well-founded if there is a 'reasonable degree of likelihood' that it will materialise; R v SSHD ex p. Sivakumaran [1988] AC 956, per Lord Goff at 1000F-G.
>
> 4) Sufficiency of state protection, whether from state agents or non-state actors, means a willingness and ability on the part of the receiving state to provide through its legal

system a reasonable level of protection from ill-treatment of which the claimant for asylum has a well-founded fear; Osman v UK [1999] 1 FLR 193], Horvath, Dhima [2002] EWHC 80 (Admin), [2002] Immigration Judge AR 394].

5) The effectiveness of the system provided is to be judged normally by its systemic ability to deter and/or to prevent the form of persecution of which there is a risk, not just punishment of it after the event; Horvath; Banomova [2001] EWCA Civ.807. McPherson [2001] EWCA Civ 1955 and Kinuthia [2001] EWCA Civ 2100.

6) Notwithstanding systemic sufficiency of state protection in the receiving state a claimant may still have a well-founded fear of persecution if he can show that its authorities know or ought to know of circumstances particular to his case giving rise to his fear, but are unlikely to provide the additional protection his particular circumstances reasonably require; Osman.

Article 3 claims

7) The same principles apply to claims in removal cases of risk of exposure to Article 3 ill-treatment in the receiving state, and are, in general, unaffected by the approach of the Strasbourg Court in Soering; which, on its facts, was, not only a state-agency case at the highest institutional level, but also an unusual and exceptional case on its facts; Dhima, Krepel [2002] EWCA Civ 1265 and Ullah [2004] UKHL 26.

8) The basis of an article 3 entitlement in a removal case is that the claimant, if sent to the country in question, would be at risk there of Article 3 ill-treatment.

9) In most, if not all, Article 3 cases in this context the concept of risk has the same or closely similar meaning to that in the Refugee Convention of a 'well-founded fear of persecution', save that it is confined to a risk of Article 3 forms of ill-treatment and is not restricted to conduct with any particular motivation or by reference to the conduct of the claimant; Dhima, Krepel, Chahal v UK [1996] 23 EHRR 413.

10) The threshold of risk required to engage Article 3 depends on the circumstances of each case, including the magnitude of the risk, the nature and severity of the ill-treatment risked and whether the risk emanates from a state agency or non-state actor; Horvath.

11) In most, but not necessarily all, cases of ill-treatment which, but for state protection, would engage Article 3, a risk of such ill-treatment will be more readily established in state-agency cases than in non-state actor cases – there is a spectrum of circumstances giving rise to such risk spanning the two categories, ranging from breach of a duty by the state of a negative duty not to inflict Article 3 ill-treatment to a breach of a duty to take positive protective action against such ill-treatment by non-state actors; Svazas.

12) An assessment to the threshold of risk appropriate in the circumstances to engage Article 3 necessarily involves an assessment of the sufficiency of state protection to meet the threat of which there is such a risk – one cannot be considered without the other whether or not the exercise is regarded as 'holistic' or to be conducted in two stages; Dhima, Krepel, Svazas [2002] EWCA Civ 74.

> 13) Sufficiency of state protection is not a guarantee of protection from Article 3 ill-treatment any more than it is a guarantee of protection from an otherwise well-founded fear of persecution in asylum cases – nor, if and to the extent that there is any difference, is it eradication or removal of risk of exposure to Article 3 ill-treatment'; Dhima, McPherson; Krepel.
>
> 14) Where the risk falls to be judged by the sufficiency of state protection, that sufficiency is judged, not according to whether it would eradicate the real risk of the relevant harm, but according to whether it is a reasonable provision in the circumstances; Osman.
>
> 15) Notwithstanding such systemic sufficiency of state protection in the receiving state, a claimant may still be able to establish an Article 3 claim if he can show that the authorities there know or ought to know of particular circumstances likely to expose him to risk of Article 3 ill-treatment; Osman.
>
> 16) The approach is the same whether the receiving country is or is not a party to the ECHR, but, in determining whether it would be contrary to Article 3 to remove a person to that country, our courts should decide the factual issue as to risk as if ECHR standards apply there – and the same applies to the certification process under section 115(1) and/or (2) of the 2002 Act".

29. While it will always be relevant to ask whether or not there is in general a sufficiency of protection in a country, the critical question will nevertheless remain in an asylum case as set out in the sixth proposition by Auld LJ and in an Article 3 case as set out in the fifteenth proposition. Thus I must look, notwithstanding a general sufficiency of protection in a country, to the individual circumstances of the appellant and ask the above questions.

30. In assessing the appellant's credibility, I bear in mind that the core of her claim, that she has been subject to physical and appalling sexual abuse at the hands of her father, I accept also the diagnosis in the psychiatric report that she is suffering from PTSD is consistent with that. I have also taken into account the entirety of the background evidence and also the reports of the expert, Dr Korovilas.

31. The appellant did not claim asylum en route to the United Kingdom either in Italy or when she spent time there in Spain or France. Her explanation that she was concerned that Albanians would be able to trace her to those EU countries where they would be able to travel without an EU passport as opposed to the United Kingdom indicates that she believed that she would be safe here because unlike those countries covered by the Schengen arrangement, Albanians would not easily be able to come here. Looked at objectively, that makes little sense but I bear in mind the position that the appellant found herself in. She had escaped from an appalling situation and it is entirely understandable that she would fear being traced. That is, I consider, sufficient such that little or no damage is done to her credibility by operation of Section 8 of the 2004 Act. I accept similarly that she was reticent in disclosing in detail what happened to her given the very sensitive nature of what had happened to her.

32. There are no submissions beyond that regarding her credibility and in the circumstances, I have no reason to doubt, given the major concession made, the authenticity of the letters sent to her by her mother and her friend MH. They form part of the picture of what has happened to her. I find nothing in the letters which is materially inconsistent with the appellant's account as accepted.

33. I accept in the circumstances that her cousin's husband is a police officer. Detailed printouts regarding him had been provided and again these are not challenged. Insofar as the appellant had not mentioned him, when asked, in interview, it is difficult to describe that somebody who is a police officer who is the husband of a cousin is a "close relative". I also attach little or no weight to the observation, as raised in cross-examination, as to whether he did or did not have a government job; any inconsistency is adequately explained by what is meant by a government job and by what is meant by close relative, a subjective issue. A cousin's husband would rarely be called close.

34. I accept the appellant is pregnant. That is not in dispute but I do have some concern about the fact that she would not disclose the name of the father. Even when offered the opportunity to write down the name so that it would not be disclosed in court or recorded, the appellant refused to do so, which I find evasive and I do not accept her reasons for not doing so.

35. It is not clear to me either why Mr L should, at significant expense, be supporting the appellant nor has the exact nature of what tenancy he has over the property Ilford where the appellant lives been explained to me nor how he is able to afford that yet lives somewhere else with his partner. I do not consider I have been told the truth about this but I find that this is peripheral to the core of the asylum claim and does not damage the overall credibility such that I do not accept the account of what happened to the appellant in Albania or as to the subjective nature of her fear.

36. Taking all of these factors into account and viewing the evidence as a whole, in the light of the background evidence and medical reports, I found the appellant to be a credible witness. I accept her account of what happened in Albania and I accept also the evidence that her father still maintains an interest in her as shown by the evidence she has heard from her mother and also from her friend MH. I accept also that her maternal cousin's husband is a police officer.

37. Having made these findings, I turn now to the risk to the appellant on return. It is necessary to answer the following questions:-

    (1) From whom is the appellant at risk?

    (2) Where is the appellant at risk?

    (3) Is there a sufficiency of protection for her?

    (4) Is there anywhere she could relocate within Albania where she would not be at risk?

38. The only person who poses a threat to the appellant is her father. I accept her evidence about how he had treated her and her mother and that he is an alcoholic. I discount the suggestion that he may also be abusing drugs; this appears to be speculative on the part of the appellant which has unfortunately been inflated by the psychiatrist. That is not, in any event, a relevant matter.

39. I accept the evidence also that the father maintains an active interest in finding her. Whether he would be able to do so is contingent on (a) him knowing that she had returned to Albania and (b) being able to trace her. That is of course if she had not returned to the local area. The continuing threat and interest in her is confirmed by the letters from the appellant's mother and friend, MH, which in the light of the concessions made, and the overall positive credibility findings, I accept. Those letters are as recent as 14 October 2020. In the light of that evidence, I accept that the appellant's father continues to be a threat to her and maintains an interest in her. Given how he has treated her in the past, I am satisfied also that he presents a threat to her of violence, either physical or sexual, of sufficient severity to constitute persecution, serious harm and engage Article 3.

40. I am satisfied also, given the level of sustained interest, that the risk to the appellant would not just be in the local area but would extend to other parts of the country, were he to learn she had returned. That is something she would find difficult to avoid happening; she would be returning with a small baby and would have to avoid contact with family and friends lest that information reach him, aside from any difficulties arising from her having to register with a local authority, an issue to which I will return.

41. In assessing whether there is a sufficiency of protection for this appellant, the principal difficulty in assessing this case is that what the appellant has been subjected to goes far beyond the paradigm of domestic violence, an issue to which for understandable reasons, much of the background material is directed. There is significant evidence in the CPIN "Albania: Domestic abuse and violence against women" that there has been increased reporting, training of police and other agencies. But the situation is different when it comes to sexual violence.

42. Even though there is a functioning police service in Albania and a criminal justice system, it is not without its problems. In the CPIN on Domestic Abuse it is noted at 3.2.1 that:

> Rape, including spousal rape, is a crime. Penalties for rape and assault depend on the age of the victim. For rape of an adult, the prison term is three to 10 years. The law includes provisions on sexual assault and sexual harassment and makes the criminalization of spousal rape explicit. 'The government did not enforce the law effectively. Officials did not prosecute spousal rape. The concept of spousal rape was not well understood, and authorities often did not consider it a crime.

43. I note in passing, that the appellant's father has on several occasions raped his wife. This passage indicates the difficulty she would have faced were she to have reported the crime.

44. The CPIN set out at section 5.12 material on other forms of violence against women which is the primary concern in this case. The CPIN provides:

5.12.1The GREVIO report of November 2017 stated:

'[...] forced marriage, sexual harassment and sexual violence, have received little legislative and political attention. Available data regarding these other forms of violence against women -however limited -corroborate the need to address them comprehensively. Hence, more efforts are needed, notably in the areas of data collection, multi-agency co-operation, awareness-raising, education, training of professionals, general and specialist support services, as well as restraining or protection orders, to cover effectively all forms of violence against women and girls.'55

5.12.2 GREVIO further reported on sexual violence:

'There are no rape crisis or sexual violence referral centres in Albania, although[...]medical and forensic examinations are offered in hospitals and other healthcare settings. Other types of support such as trauma support, counselling for victims, support during court proceedings by woman to woman advocacy are rare. Available administrative data record very few cases of sexual violence against women. According to the Statistical Yearbook of the Ministry of Justice, the number of convicted persons under the criminal offence of rape (Article 102 of the CCA) was only 3 in 2014 and 4 in 2015. However, given the taboo which very much still enshrouds the phenomenon of sexual violence, it is likely that the great majority of cases go unreported. The prevalence of sexual violence in domestic relations was rated at 7.9 % in the 2013 national survey on domestic violence conducted by INSTAT, a figure which is considered an under-representation of the actual occurrence of sexual violence in intimate partner relationships. In light of these figures, GREVIO is extremely concerned that the majority of victims of sexual violence are likely to receive little or no protection.'56

5.12.3GREVIO further stated:

'As a reflection of the law's main focus on domestic violence, specific standards for the treatment and care of other forms of violence against women, such as sexual violence and forced abortions, are lacking. The absence in Albania of any sexual violence referral centres, be they in a hospital or other setting, leaves victims at risk of not receiving the appropriate medical care. Moreover, the restrictive regulations subjecting forensic examinations to a request by the law enforcement agency or prosecution office are at odds with the best practice requiring forensic examinations to be carried out without delay in case of sexual violence regardless of whether the matter will be reported to the authorities. GREVIO is further informed in this respect that, in part due to the low fee paid for carrying out forensic examinations, victims have at times been required to pay additional amounts in order to receive an examination.

45. It is evident that no thought of criminal prosecution has prevented the appellant's father from carrying out violent sexual attacks on her. Further, as the expert Dr James Korovilas wrote in his report at page 9, the police are unlikely to take the appellant's concern seriously, given that they are unwilling to take action against family members. That is consistent with the other evidence, particularly as regards the attitude to sexual violence. He also opines, which I accept, that she would be unlikely to be protected against imminent attack.

46. Even were she to return to live elsewhere in Albania, in order to get protection (and indeed to enter a shelter – see CPIN at 6.1.6) she would need to obtain a protection order. There are difficulties with those, even in the context of domestic violence in terms of their enforcement. Much of the material concerns victims of domestic violence not sexual violence, and it is less clear how this appellant, given the lapse of time and apparent lack of physical evidence could obtain one. I am satisfied that on the material provided, that is unlikely given also that this case does not fit the paradigm of domestic violence.

47. In the context of sexual violence, it is evident from the CPIN at 6.3.1 that there is limited availability of shelters for victims of sexual violence as opposed to domestic violence.

48. Even assuming the appellant could enter a shelter, and would get assistance with her psychological problems, she would have a small baby with her. The support from a shelter would be only temporary and reintegration would be difficult. Much of the material relates to Tirana, the area from which she originates. There would I accept be difficulties in her getting employment and accommodation, exacerbated by her having a small baby and serious mental health problems. I consider that the stress of having to return to Albania where she has an understandable strong fear of being attacked again is likely to exacerbate these problems.

49. Going back, then to the questions identified at [28] above, I consider that there is little evidence of systemic protection for the victims of sexual violence. In this case, I consider that there is a serious risk of further attack, and no realistic prospect of the state either deterring the father, given the apparent lack of consequences, and the very low chance of prosecution.

50. Further, while TD and AD (Trafficked women) CG [2016] UKUT 92 is not concerned directly with domestic violence, it is relevant on the issue of shelters, and on what happens after that time-limited protection. I am satisfied, having had regard to TD and AD in particular at [109], [111] to [112] and 119 that there is a real prospect of the appellant, given her mental ill-health and the unavailability of family support as the aunt is no longer able to help, and there would a significant risk were she to contact other relatives of her father finding out, that she would not be able to cope. I reach that conclusion noting that although she had been able to obtain employment, that was in different circumstances, and when she had no child.

51. In addition, there is also a risk of her father finding her. While the CPIN indicates that there not all police officers are able to access the relevant population register, and that unauthorised access can be identified. That said, there is no indication of how often there are sanctions imposed, or whether (as appears to be the case – see letter at Annex A of CPIN), there may need to be a particular officer identified whose access is then checked if a complaint is made. Given the level of corruption and other well-documented problems with the police, I am satisfied there is a real risk of the appellant's father being able to locate her whereabouts, wherever she was in Albania.

52. Taking all of these factors into account, I am satisfied the appellant would be at risk of further ill-treatment of the same level of severity as before at the hands of her father and that there would, in her particular circumstances, be no sufficiency of protection for her as the victim of sexual abuse. In that regard, I note the evidence from GREVIO cited [45] above. I am not satisfied that there would for this appellant be reasonable protection, or that proper regard would be had to the particular circumstances where she has been targeted by her father and faces a real threat from him too, as in Osman. I find also that, in her circumstances, given her mental ill-health, the lack of family support and having a small child outside of marriage, that it would be unreasonable or unduly harsh to expect her to relocate within Albania.

53. I do not, however, consider that this appellant is at risk of being trafficked. Even though vulnerable, she is well-educated and unlikely to be the victim of any deception designed to entrap her, nor is it likely that she would, having a small child, be likely to be forced into such a situation. I am not satisfied either that, given the protective nature of her having a child, that she is at risk of suicide sufficiently to engage the test set out in J v SSHD.

54. I am not, however, satisfied that any risk to the appellant of ill-treatment at the hands of her father is for a convention reason. It is personal to her, and not because of her being a member of a particular social group.

55. That leaves the question of whether any failure to protect her is on account of membership of a particular social group. In addressing that issue, I have followed Fornah [2006] UKHL 46 where Lord Bingham wrote [16]:

> 16 EU Council Directive 2004/83/EC of 29 April 2004, effective as of 10 October 2006, is directed to the setting of minimum standards among member states for the qualification and status of third country nationals or stateless persons as refugees, or as persons who otherwise need international protection, and setting minimum standards for the content of the protection granted. The recitals recognise the need for minimum standards and common criteria in the recognition of refugees, and for a common concept of "membership of a particular social group as a persecution ground". The Directive expressly permits member states to apply standards more favourable to the applicant than the minimum laid down. Article 10 provides (with Roman numerals added to the text):
>
> "Reasons for persecution
>
> I Member States shall take the following elements into account when assessing the reasons for persecution …
>
> (d) a group shall be considered to form a particular social group where in particular:
>
> [(i)] members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and
>
> [(ii)] that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;

> [(iii)] depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States: Gender related aspects might be considered, without by themselves alone creating a presumption for the applicability of this Article."

Read literally, this provision is in no way inconsistent with the trend of international authority. When assessing a claim based on membership of a particular social group national authorities should certainly take the matters listed into account. I do not doubt that a group should be considered to form a particular social group where, in particular, the criteria in sub-paragraphs (i) and (ii) are both satisfied. Sub-paragraph (iii) is not wholly clear to me, but appears in part to address a different aspect. If, however, this article were interpreted as meaning that a social group should only be recognised as a particular social group for purposes of the Convention if it satisfies the criteria in both of sub-paragraphs (i) and (ii), then in my opinion it propounds a test more stringent than is warranted by international authority. In its published *Comments* on this Directive (January 2005) the UNHCR adheres to its view that the criteria in sub-paragraphs (i) and (ii) should be treated as alternatives, providing for recognition of a particular social group where either criterion is met and not requiring that both be met. With regard to (iii), the UNHCR comments:

> "With respect to the provision that '[g]ender related aspects might be considered, without by themselves alone creating a presumption for the applicability of the article,' UNHCR notes that courts and administrative bodies in a number of jurisdictions have found that women, for example, can constitute a particular social group within the meaning of Article 1A(2). Gender is a clear example of a social subset of persons who are defined by innate and immutable characteristics and who are frequently subject to differentiated treatment and standards. This does not mean that all women in the society qualify for refugee status. A claimant must demonstrate a well-founded fear of being persecuted based on her membership in the particular social group.
>
> Even though less has been said in relation to the age dimension in the interpretation and application of international refugee law, the range of potential claims where age is a relevant factor is broad, including forcible or under-age recruitment into military service, (forced) child marriage, female genital mutilation, child trafficking, or child pornography or abuse. Some claims that are age-related may also include a gender element and compound the vulnerability of the claimant."

56. Despite Mr Chakmajian's submissions, I am not satisfied that women in Albania form a particular social group or that I should depart from DM. I am not satisfied either that victims of sexual violence are a particular social group either. There is insufficient material to show that the are a group which has a distinct identity, or even that woman victims of sexual abuse have such an identity. While I accept that being a victim of sexual assault is not something that can be changed, not all assaults are the same such that they could be said to have a common background independent of the persecutory act. Nor is there evidence that the lack of protection offered is due to membership of any particular group.

57. Accordingly, I dismiss the appeal on asylum grounds, but I allow the appeal on humanitarian protection grounds. It follows also that I allow the appeal on human

rights grounds on the basis that removing the appellant to Albania would result in a breach of article 3.

58. In the circumstances, it is not necessary for me to consider any argument that removing the appellant to Albania would be in breach of her article 8 rights.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

2. I remake the decision by:

   (a) dismissing the appeal on asylum grounds; but,

   (b) allowing the appeal on humanitarian protection grounds; and,

   (c) allowing the appeal on human rights grounds.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 14 December 2020

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul

ANNEX: ERROR OF LAW DECISION

IAC-FH-LW-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05087/2019

THE IMMIGRATION ACTS

Heard at Field House
On 19 February 2020

Decision & Reasons Promulgated

……

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

E U
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Chakmakjian, instructed by Wimbledon solicitors
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Plumptre, promulgated on 3 October 2019, dismissing her appeal against the

© CROWN COPYRIGHT 2020

decision of the Secretary of State to refuse the appellant's asylum and human rights claim.

2. The appellant's claim is relatively simply expressed. She gives an account of having been abused by her father and that she would not be able to relocate elsewhere in Albania, there being in effect no protection from the authorities for her or that it would be unreasonable or unduly harsh for her to go and live elsewhere given the conditions which might apply to her in her circumstances.

3. The Secretary of State did not accept the appellant's account nor, for that matter, did the judge. The judge considered carefully two expert reports, the interview records and the other documents put before her and reached findings of credibility with respect both to the experts and as to the appellant. The judge did not accept the appellant's account of what had happened to her in Albania which was the core of the reason that she left the country and obviously is the risk to be assessed on her return.

4. The judge also rejected the evidence of Dr Young considering that she had descended into the arena. She also concluded that it would not be a breach of the applicant's rights pursuant to Article 8 to return her to Albania.

5. There are four primary grounds of appeal: first, that there is a lack of clear reasoning and findings regarding the core issue; second, that the judge erred in her criticisms of the expert Dr Young; third, the judge paid undue weight on an alleged inconsistency in an interview in the appeal statement regarding whether the appellant had a relative or family member in a Government role; and, fourth, the judge failed properly to address Article 8.

6. I deal first with ground 1 which is on all accounts a sensitive issue and I do not intend to go into the detail of what is alleged. As Mr Tarlow submits the decision by an experienced judge does appear on first glance to be a well-written and properly reasoned decision. That said, there are a number of factors in relation to the assessment of credibility which give rise to concern. First, regarding the core of what happened to the appellant, there is an inconsistency I find in the judge's decision at paragraph [42] into what she accepted and whether she accepted the appellant's reasons for not making a prior disclosure for what had occurred. Whilst that is not in and of itself a reason to set aside the decision on the basis that the credibility findings are defective, there are other aspects which also raise concerns.

7. The judge does consider in some detail at paragraphs 44 and 45 letters from the appellant's mother, yet fails properly to explain why she is prepared to attach weight to parts of the evidence from the mother, yet to reject other parts, and it is notable that the parts that she does accept are parts that she holds against the appellant while rejecting those that do not assist her. Similarly, there is a similar inconsistency, although it has not been drawn out in much detail with regard to the evidence and declarations from a friend, Miss H, referred to at paragraphs [47] and [48].

8. Further, I consider that her failure to mention the abuse at a screening interview is a factor that has not been taken into account properly, given also the observation that it was reasonable for her to have been more comfortable to explain a sensitive issue in writing.

9. In addition, bearing in mind that the appellant was giving evidence through an interpreter, it is difficult to see how the findings at paragraph 39 that the appellant had embellished her case are sustainable. A Government role or a state job might not necessarily include the police and there does not appear to be sufficient evidence on what is said to suggest that there had been any degree as the judge appears to think of collusion between the appellant and her solicitor. It is unclear to me also how it came about that the appellant was being asked about what passed between her and her solicitor. That was very clearly a privileged matter and caution should at the very least have been taken before relying on such evidence.

10. Looking at these and looking at the decision as a whole I consider that the findings as to credibility are unsafe and for that reason the decision must be set aside. In reaching that conclusion I have considered whether the findings were material: I conclude that they were, given the somewhat cursory attention to the risks that would occur had the appellant's account been true. In my view what is set out at paragraph 65 is not sufficient in these circumstances to save the decision. Accordingly, I conclude that ground 1 is made out and on that basis the decision must be set aside.

11. I do however consider that it is necessary to address the other grounds. Had it been a stand-alone ground I would not have found the ground to establish an error. I consider that in the circumstances and for the reasons given the judge gave adequate and sustainable reasons for rejecting the report of Dr Young. I consider that the comments regarding her descending into the arena were well-made, given in particular that at passages in her report Dr Young is, in effect, making statements about the consistency and the quality of the evidence given by the appellant.

12. I consider that ground 3 is made out and I have in effect dealt with this in assessing the issue of credibility.

13. Ground 4 is in a sense parasitic on the findings with regard to asylum, given that insofar as Article 8 was raised it was raised in a very brief submission in the skeleton argument put to the First-tier Tribunal that the circumstances described of the appellant were such that she would find very significant difficulties in reintegrating into life in Albania and therefore she met the requirements of paragraph 276ADE(1)(vi). I find as these findings are with regard to the asylum claim must be set aside, but for completeness it is necessary to grant permission on this ground only as the remaking of this decision will inevitably require a consideration of Article 8 if the asylum claim or Article 3 humanitarian protection claim is not made out.

14. Accordingly, for these reasons I set aside the decision of the First-tier Tribunal for it to be remade. Although none of the findings are preserved, I am not satisfied that it

would in all the circumstances of this case be in the interests of justice to remit it to the First-tier Tribunal

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

2. The appeal will be remade in the Upper Tribunal on a date to be fixed.

3. Any additional evidence upon which either party seeks to rely must be served on the other party and on the Upper Tribunal at least 10 working days prior to the hearing.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 21 February 2020

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul