Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01079/2019

THE IMMIGRATION ACTS

Hearing at Field House	**Decision & Reasons Promulgated**
On 18th October 2021	**On 11th March 2021**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

K F
(Anonymity Direction Made)
Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT
Respondent

Representation:
For the Appellant: Ms A Radford, instructed by Turpin & Miller LLP Solicitors
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

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

An anonymity direction was made by the First-tier Tribunal ("the FtT"). As the appeal raises matters regarding a claim for international protection, it is appropriate for an anonymity direction to be made. Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member

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of his 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.

Introduction

1. The appellant is an Albanian national. His appeal against the respondent's decision of 21st January 2019 to refuse his claim for international protection was dismissed by First-tier Tribunal Judge O'Hagan for reasons set out in a decision promulgated on 9th May 2019.

2. The appellant was granted permission to appeal by Upper Tribunal Judge Finch on 9th December 2019. Following a hearing on 16th January 2020, the decision of First-tier Tribunal Judge O'Hagan was set aside for reasons set out in the decision of Upper Tribunal Judge Jackson dated 13th February 2020. She found First-tier Tribunal Judge O'Hagan failed to make sufficient findings of fact on the core issue regarding the appellant's sexuality and failed to provide adequate reasons for the conclusions reached. She directed that the decision should be remade *de* novo. The appeal was listed for a resumed hearing on 6th October 2020 but was adjourned because an Albanian interpreter was not available. In directions issued on 6th October 2020, Upper Tribunal Judge Jackson recorded that the appellant is not seeking any departure from the country guidance as set out in BF (Tirana – gay men) [2019] UKUT 0093 (IAC).

3. The matter was listed for a resumed hearing before me on 18th October 2021. At the outset of the hearing Ms Radford applied for an adjournment. She submitted that there have been further developments, and there is further evidence that the appellant would want to adduce. I was told that since the previous hearing and the 'error of law' decision, the appellant had formed a relationship in the UK and although that relationship has ended, there is evidence of the appellant's sexuality that he would wish the Tribunal to consider. Ms Radford submits the appellant is now also active on social media and there are Instagram, Facebook, and snapchat accounts, and potential witnesses regarding the relationship that the

appellant entered into, albeit no evidence from the individual that the appellant was in a relationship with. Ms Radford was entirely frank about the appellant's failure to engage with his solicitors since the hearing before Upper Tribunal Jackson in October 2020. I was told that it was not until Thursday (*14th October 2021)* that the appellant re-established contact with his representatives and informed them of the relationship that he had had, and of his social media activity. It was not clear why the appellant's representatives had not taken a statement from the appellant immediately, and it appears to have been left to Ms Radford to prepare a statement when she met with the appellant shortly before the hearing commenced. The matter had been listed before me for the hearing to commence at 2pm and as at 2:30pm, there was still no completed statement from the appellant.

4. I refused the application for an adjournment. The decision under appeal is dated 21st January 2019. I acknowledge the appellant was a child at the time of his arrival in the UK, but he is now 20 years old. The decision of First-tier Tribunal Judge O'Hagan was set aside as long ago as February 2020 and the matter was listed for a resumed hearing on 6th October 2020. That hearing could not go ahead because of a lack of an interpreter. There has been a considerable delay in facilitating a face-to-face hearing and there is no reasonable explanation for the appellant's failure to engage with his representatives. The parties were sent the Notice of the Hearing on 21st September 2021. The appellant has had ample time to ensure that any evidence that he relies upon, is put before the Tribunal in a timely fashion. Balancing the overriding objectives of ensuring the party's ability to participate fully in the proceedings and avoiding delay, the fair and just course, is to proceed with the appeal on the basis of the evidence adduced.

5. At the hearing, I heard evidence from the appellant with the assistance of an Albanian interpreter arranged by the Tribunal. The appellant's maternal uncle [VH] has previously made a statement but did not attend the

hearing. I was informed by Ms Radford that the appellant is no longer in contact with his uncle.

6. I record from the outset that the appellant was born on 21st September 2001. He arrived in the UK in August 2016 and made his claim for asylum on 8th November 2016. His claim was refused by the respondent for reasons set out in a decision dated 9th May 2019. The appellant was therefore 14 years old at the time of his arrival in the UK and 15 when he made his claim for international protection. The appellant was 17 when the respondent refused his claim. Although the appellant is now 20, in reaching my decision and when assessing the appellant's credibility, I have been particularly mindful of the Joint Presidential Guidance Note No.2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance, and my assessment of the appellant's credibility has been considered in the round, taking due account of the evidence before me and giving due allowance for the appellant's age at the material time. I have made allowances for the fact that a child or young adult may have problems giving a coherent account of their history.

The appeal

7. The appellant has appealed under s82(1) of the Nationality, Immigration and Asylum Act 2002 against the decision of the respondent to refuse her claim for asylum and humanitarian protection. The appellant claims to be a refugee whose removal from the UK would breach the United Kingdom's obligations under the 1951 Refugee Convention. Alternatively, he claims his removal to Albania would be contrary to Article 8 ECHR.

8. The appellant bears the burden of proving that he falls within the definition of "refugee". In essence, the appellant has to establish that there are substantial grounds for believing, more simply expressed as a 'real risk', that he is outside of her country of nationality, because of a well-founded fear of persecution for a refugee convention reason and he is unable or unwilling, because of such fear, to avail herself of the protection of that

country. Paragraph 339C of the immigration rules provides that an applicant who does not qualify as a refugee will nonetheless be granted humanitarian protection if there are substantial grounds for believing that if returned, they will face a real risk of suffering serious harm and they are unable, or, owing to such risk, unwilling to avail themselves of the protection of that country.

9. A full account of the evidence and the submissions made before me is set out in my record of proceedings. At the end of the hearing before me, I reserved my decision. I informed the parties that my decision will follow in writing, and this I now do. In reaching my decision I have fully considered all the evidence that was before the Tribunal, whether it is expressly referred to in this decision or not.

The evidence

10. The appellant was born and lived in Peshkopi, a city in the Diber District, Albania. He arrived in the UK clandestinely, having previously used his own Albanian passport to travel from Albania to France with his father. His parents and a younger brother *(born July 2004)* remain in Albania. His maternal uncle, VH, and aunt are in the UK. The appellant was met by VH when he arrived in the UK in August 2016. The appellant summarised his claim in a statement dated 20th December 2016, a copy of which is in the respondent's bundle (Annex B). The statement is certified as having been read to the appellant.

11. In summary, the appellant claimed that he had a relatively normal life until 2015. He generally enjoyed school and had quite a few friends. He claims he always felt different to other children and was attracted to boys and not girls. He claims that around the time of the start of the school year in 2015, he told one of his friends (a girl) how he felt about his sexuality and of the feelings he had. He liked a boy in his year at school and wanted to tell someone. He trusted his friend and thought she would help and support him. The appellant claims that at first, this friend behaved

normally and didn't react badly. However, she then told other children in the appellant's year, and they started picking on him. The appellant claims he then had a lot of problems at school and other children treated him badly. Even the friend that he had confided in, started teasing him. He claims that went on for several months and although he wanted to tell a teacher, other children threatened him saying that if he did, worse things would happen. He claims that although he did not tell his parents, over time, rumours spread from the children at school and their parents, and his own parents found out. He was then treated badly by his parents. He claims they told him that he needed to change and stop behaving like he was. He claims the treatment from his parents got worse, and they would shout at him every day and sometimes physically abuse him too. His brother seemed to agree with his parents and the children at school. He was told by his parents that he needed to leave the area as they were not happy for him to stay living at home. They were embarrassed to have him as a son. He claims his father agreed to help him leave the country because he did not want the appellant living at home anymore. The appellant's father therefore booked a flight and travelled with the appellant to France on 19th July 2016. On arrival, the appellant was left at the airport and told that he needed to fend for himself. He was given €200 and no further help. The appellant found a group of three Albanians who agreed to help him. He claims that one day about a month after arriving in France, they all walked to a place where they got on the lorry travelling to the UK. The appellant claims he cannot return to Albania because neither his family nor anyone else will support him there. He claims he would be treated badly because of his sexuality. He claims his family have completely abandoned him and although he is trying to get in touch with them, they have cut off all contact with him. He is frightened of his family and the wider community.

12. The appellant has filed and served an appellant's bundle comprising of some 327 pages. The bundle includes two statements made by the appellant *(dated 2nd April 2019 and 18th September 2020)* and a

statement made by the appellant's maternal uncle, [VH]. I also have before me a copy of the respondent's bundle.

The oral evidence of the appellant

13. The appellant was called to give evidence. He was assisted by an Albanian interpreter arranged by the Tribunal. The appellant and interpreter both confirmed that they were able to communicate and understand each other without any difficulty. The appellant adopted his witness statements dated 2nd April 2019 and 18th September 2020. He confirmed the statements had been read to him in a language that he understands, and the content of the statements is true and correct.

14. In answer to questions put by Ms Radford, the appellant said that although he still feels nervous about meeting gay people, he has now been in a relationship in the UK. The appellant said that he entered into a relationship with 'Ryan' in September/October 2020. He was not actively looking for a boyfriend at the time, but it happened spontaneously. They met at a nightclub called "Bridge" and behaved like a normal couple "walking hand-in-hand together" when they were out in public. The appellant said that he had told some of his friends about the relationship and they started living together one or two weeks after becoming a couple. They lived together for 2 to 3 months, and the relationship ended just after the New Year in January. The appellant said the relationship came to an end because Ryan had showed interest in other boys. They no longer speak to each other, and the appellant does not know if Ryan would support his claim for international protection. The appellant said that he has not met anyone else since the breakdown of his relationship with Ryan although he has tried to meet other men by going to discos and using social media.

15. In cross-examination, the appellant said that he lived with Ryan in Oxford. The appellant moved out of his address to move in with Ryan and when the relationship ended, the appellant lived at a friends address. The

appellant was asked whether he could remember Ryan's surname. He initially said he did not want to give the surname and that he needed to keep it private. Mr Duffy reminded the appellant that the respondent does not accept that the appellant is a homosexual. The appellant said that he remembers someone reading the respondent's decision to refuse his claim for international protection to him but said he cannot remember why it had been refused. He was asked why none of the friends that knew he was in a relationship with Ryan have provided a statement. He said he did not know that a statement was required from them and "didn't know it is important".

16. I assured the appellant that an anonymity direction is in place preventing the appellant from being identified and asked him whether he maintained that he was not prepared to disclose Ryan's surname. The appellant confirmed that the surname is "Holland". He also provided Ryan's date of birth which is recorded in the record of proceedings. The appellant told me that he had started 'posting' on social media such as Snapchat, Instagram and Facebook after he had entered into his relationship with Ryan. He had posted 'photo's' on Snapchat and Instagram but said he did not 'post' anything on Facebook. He said that although he had continued using social media after the relationship with Ryan ended, he had deleted the pictures. He said that in addition to Instagram and Snapchat, he uses 'Tinder' to look for other boys although that is very rarely.

17. In re-examination the appellant confirmed that he has deleted the photo's that he had with Ryan, from his social media. He confirmed that he had used social media to look for boys before he entered into the relationship would Ryan and started using social media again, to look for boys after that relationship ended.

Submissions

18. On behalf of the respondent, Mr Duffy relied upon the respondent's decision of 21st January 2019 and submits the appellant is not a witness of

truth. He submits the appellant's claim that he forgot the name of his closest friend, and someone that he confided in, is the sort of untruth that a child would say and that very much undermines the appellant's credibility in general. He submits the appellant has claimed for the first time today, that he has had a relationship in the United Kingdom, but that is an account, Mr Duffy submits, that has been concocted in an attempt to provide some corroborative evidence of his claim to be a gay man. Mr Duffy submits that the way in which the Tribunal had to tease out the name of the appellant's partner is indicative of the appellant not telling the truth and indicative of an individual was making it up as he went along. Mr Duffy invites me to find that the appellant is not a credible witness and as the core of his account is not credible, the appeal should be dismissed.

19. Alternatively, even if the Tribunal finds the appellant is gay, upon return to Albania, he is likely to stay in Tirana and would not be at risk in Peshkopi. If the appellant's account is accepted, he previously had problems at school and was chastised by his parents. Upon return now, he would not be going to school and will not be living with his parents. Mr Duffy submits the appellant will not be at risk upon return because he would, on his own evidence, not outwardly present as someone that is gay. Mr Duffy refers to the definition of the expression 'openly gay' set out in paragraph [8] of BF (Tirana – gay men) Albania [2019] UKUT 0093 (IAC), in which the Upper Tribunal noted that gay men, as with heterosexual men, may exhibit their sexuality in different ways. The Tribunal considered an appropriate definition as being 'someone who does not conceal his sexuality except insofar as he wishes to do so for reasons other than a fear of persecution'. Mr Duffy submits that on his own evidence, the appellant is not someone that is flamboyantly gay, and you would not know he is gay unless he told you, or you knew him. Mr Duffy submits that on the evidence, it is clear that the appellant's parents did not want to do him harm or injure him. His father took him to France, and on the appellant's account, they are not actively looking for him. The appellant's father was unemployed, and the

evidence is that the appellant comes from an ordinary family in the northern part of Albania. There is no risk of the family knowing of the appellant's return to Albania and on any view, internal relocation to Tirana is open to the appellant.

20. In reply, Ms Radford relied upon the appellant's skeleton argument. She submits that in considering the credibility of the appellant, I should have in mind throughout that the appellant was 14-15 years old at the time of the relevant events in Albania, and when he wrote his first witness statement. I should also have regard to his young age when he was interviewed by the respondent. She submits that because of his young age, his evidence may be less detailed and coherent, and he is likely to have greater difficulty understanding and answering questions. She submits his understanding and knowledge of events may be more limited in the circumstances. She also submits I should bear in mind the difficulties that an individual may have in recounting the history on account of feelings of shame, trauma, cultural and language differences, and a distrust of the authorities. The feelings of shame and stigma are particularly acute in claims regarding an individual's sexual identity.

21. Ms Radford reminds me that the appellant was reported to be crying during his asylum interview when relating to the abuse he suffered from his parents. Ms Radford submits the appellant's account of events leading to his departure from Albania has been reasonably detailed and consistent, bearing in mind his young age. It is common, she submits, for children not to be able to remember things as well. It is quite possible that he did not remember the surname of Erica because of his age, and the time that had lapsed. Ms Radford submits the appellant's experiences are consistent with background evidence about societal attitudes to homosexuality in Albania and of bullying in schools.

22. Ms Radford submits the appellant will not present as an openly gay man because of his past experiences. She submits the Upper Tribunal's

consideration of the definition of the expression ‘openly gay’ set out in paragraph [8] of BF (Tirana – gay men) Albania is problematic because the Tribunal looks at ‘openly gay men’ to include ‘discrete gay men’, and the risk to each is different.

23. Ms Radford submits the appellant has known throughout that the respondent does not believe he is gay. He was shy before, and it is not implausible that since then, he has entered into a relationship in the United Kingdom. He is simply being honest. It is entirely possible he did not realise the importance of the Tribunal knowing of his relationship with Ryan. It is not necessary for him to show he has an active gay life and when he was assured about his anonymity, he gave Ryan’s surname. The appellant is someone who previously suffered bullying, physical abuse and abandonment and there is evidence of societal abuse of gay men in Peshkopi that lends support to his claim and demonstrates that the appellant would be at risk upon return. The appellant’s family previously hurt him - they physically abused him. They wanted to get rid of him because he is a source of shame, and he would remain a source of shame again on return.

24. Ms Radford submits that if the appellant returns and relocates to Tirana, there is a real possibility that he will come across other family members. In paragraph [7] of his witness statement dated 18th September 2020, the appellant makes reference to “relatives in Tirana”, and in the circumstances, he is unable to internally relocate.

The relevant authorities

25. The correct approach to determining whether a gay person is at risk of persecution is set out in HJ (Iran) v SSHD [2010] UKSC 31. At [35], Lord Hope said:

> “35. This brings me to the test that should be adopted by the fact-finding tribunals in this country. As Lord Walker points out in para 98, this involves what is essentially an individual and fact-specific inquiry. Lord Rodger has

described the approach in para 82, but I would like to set it out in my own words. It is necessary to proceed in stages.

(a) The first stage, of course, is to consider whether the applicant is indeed gay. Unless he can establish that he is of that orientation he will not be entitled to be treated as a member of the particular social group. But I would regard this part of the test as having been satisfied if the applicant's case is that he is at risk of persecution because he is suspected of being gay, if his past history shows that this is in fact the case.

(b) The next stage is to examine a group of questions which are directed to what his situation will be on return. This part of the inquiry is directed to what will happen in the future. The Home Office's Country of Origin report will provide the background. There will be little difficulty in holding that in countries such as Iran and Cameroon gays or persons who are believed to be gay are persecuted and that persecution is something that may reasonably be feared. The question is how each applicant, looked at individually, will conduct himself if returned and how others will react to what he does. Those others will include everyone with whom he will come in contact, in private as well as in public. The way he conducts himself may vary from one situation to another, with varying degrees of risk. But he cannot and must not be expected to conceal aspects of his sexual orientation which he is unwilling to conceal, even from those whom he knows may disapprove of it. If he fears persecution as a result and that fear is well-founded, he will be entitled to asylum however unreasonable his refusal to resort to concealment may be. The question what is reasonably tolerable has no part in this inquiry.

(c) On the other hand, the fact that the applicant will not be able to do in the country of his nationality everything that he can do openly in the country whose protection he seeks is not the test. As I said earlier (see para 15), the Convention was not directed to reforming the level of rights in the country of origin. So it would be wrong to approach the issue on the basis that the purpose of the Convention is to guarantee to an applicant who is gay that he can live as freely and as openly as a gay person as he would be able to do if he were not returned. It does not guarantee to everyone the human rights standards that are applied by the receiving country within its own territory. The focus throughout must be on what will happen in the country of origin.

(d) The next stage, if it is found that the applicant will in fact conceal aspects of his sexual orientation if returned, is to consider why he will do so. If this will simply be in response to social pressures or for cultural or religious reasons of his own choosing and not because of a fear of persecution, his claim for asylum must be rejected. But if the reason why he will resort to concealment is that he genuinely fears that otherwise he will be persecuted, it will be necessary to consider whether that fear is well founded.

(e) This is the final and conclusive question: does he have a well-founded fear that he will be persecuted? If he has, the causative condition that Lord Bingham referred to in Januzi v Secretary of State for the Home Department [2006] 2 AC 426 , para 5 will have been established. The applicant will be entitled to asylum."

26. Before I turn to my findings and conclusions, it is also useful to set out the country guidance provided by the Upper Tribunal in BF (Tirana – gay men) Albania CG [2019] UKUT 00093 (IAC):

> *(i) Particular care must be exercised when assessing the risk of violence and the lack of sufficiency of protection for openly gay men whose home area is outside Tirana, given the evidence of openly gay men from outside Tirana encountering violence as a result of their sexuality. Such cases will turn on the particular evidence presented.*
>
> *(ii) Turning to the position in Tirana, in general, an openly gay man, by virtue of that fact alone, would not have an objectively well-founded fear of serious harm or persecution on return to Tirana.*
>
> *(iii) There is only very limited evidence that an individual would be traced to Tirana by operation of either the registration system or criminal checks at the airport. However, it is plausible that a person might be traced via family or other connections being made on enquiry in Tirana. Whether an openly gay man might be traced to Tirana by family members or others who would wish him harm is a question for determination on the evidence in each case depending on the motivation of the family and the extent of its hostility.*
>
> *(iv) There exists in Tirana a generally effective system of protection should an openly gay man face a risk of harm in that city or from elsewhere in Albania.*
>
> *(v) An openly gay man may face discrimination in Tirana, particularly in the areas of employment and healthcare. However, whether considered individually or cumulatively, in general the level of such discrimination is not sufficiently serious to amount to persecution. Discrimination on grounds of sexual orientation is unlawful in Albania and there are avenues to seek redress. Same-sex relationships are not legally recognised in Albania. However, there is no evidence that this causes serious legal difficulties for relationships between openly gay men.*
>
> *(vi) In general, it will not be unduly harsh for an openly gay man to relocate to Tirana, but each case must be assessed on its own facts, taking into account an individual's particular circumstances, including education, health and the reason why relocation is being addressed.*

Findings and conclusions

27. In reaching my decision I have had the opportunity of hearing the appellant and seeing his evidence tested in cross-examination. Matters of credibility are never easy to determine, particularly, as here, where the appellant's evidence is received through an interpreter, and where the

appellant was a child when he first made his claim and set out his account of events. I acknowledge that there may be a danger of misinterpretation, but I was careful to ensure that questions and answers were broken down into short sentences so as to ensure the appellant understood the question, and the interpreter had a proper opportunity to translate the answer provided. I have also borne in mind the fact that events that may have occurred some time ago, can impact on an individual's ability to recall exact circumstances. I also recognise that there may be a tendency by a witness to embellish evidence because although the core of the claim may be true, he/she believes that by embellishing their evidence, the claim becomes stronger. My assessment of the appellant's credibility has been considered in the round, giving due allowance for the fact that an individual of the appellant's age at the time of material events, may have problems giving a coherent account and the account may lack the detail that an adult might give.

28. I also remind myself that if a Court or Tribunal concludes that a witness has lied about one matter, it does not follow that he has lied about everything. A witness may lie for many reasons, for example, out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion, and emotional pressure. In reaching my decision I have also been careful not to find any part of the account relied upon, to be inherently incredible, because of my own views on what is or is not plausible. I have considered the appellant's claims and the story as a whole, against the available country evidence and other familiar factors, such as consistency with what the appellant has said before.

29. I must first consider whether the applicant is indeed gay or will be at risk of persecution because he is suspected of being gay. In reaching my decision, I have had regard to the appellant's age when he was in Albania. I also acknowledge that there is background material that confirms Albanian society is predominated by a patriarchal culture characterised by a deeply closed conservative mentality regarding LGBT people, and that

LGBT people face stigma and discrimination at individual, family and community levels. I also note there is background material referred to by the appellant *(ILGA-Europe, Annual Review of the Human Rights situation of Lesbian, Gay, Bisexual, Trans and Intersex people, 2019 – Albania, 26 February 2019)*, which states that in 2018, an increased number of young LGBT people left school due to bullying, as documented by NGO's, and that 66% of teachers stated they were silent when witnessing homophobic and transphobic bullying in their classrooms. The report states that more than two-thirds said they would not support LGBTI students and almost 10% said they would not welcome them in their class. There is therefore background material that establishes that the appellant's claim is plausible.

30. However, having had the opportunity of hearing the appellant's evidence, I find the appellant is not a witness of truth and I find that the claim advanced by him is, even to the lower standard, not a credible one. The appellant's account of his sexuality has throughout been vague and in his evidence before me, his evidence lacked any detail and clarity. Although the appellant was a child at the time of events in Albania, he is now 20 years old and he is still unable to provide clear and coherent evidence regarding his sexuality having lived in the UK for a number of years, and on his account, having initially had the support of his maternal uncle and aunt. I reject the core of the appellant's account regarding his sexuality and the events he described as leading to his departure from Albania.

31. In his witness statement dated 20th December 2016 *(made when the appellant was 15),* the appellant said that he had told one of his friends *(a girl)* of the feelings that he had and that he liked a boy in his year. The appellant was interviewed on 15th March 2017. A copy of the interview record is to be found at Annex C of the respondent's bundle. The appellant maintained that he left Albania because he had faced problems at school, with members of his family and others. He said that he fears he might be killed because of his sexuality. He said that he first realised that he liked

boys "last year", at the beginning of the school year. He was asked the name of the female friend that he had confided in, and he said *(Q.72) "I can't remember her name. I forgot her name"*. He said that he had first met her at the beginning of the school year, and they were in the same class. He had trusted her from the beginning of the school year and had told her later on. He said that he had left school *"when the year ended"*, in June 2015. When pressed why he could not remember the name of the friend he had confided in, he said *(Q.83) "I don't want to remember her name considering what she has done to me, I don't know exactly what her name was Erica? I don't know exactly".* He maintained that he decided to tell her about his feelings for boys because he trusted her and had told her that he liked a boy who was not in his class. He said that he told her that he liked him and asked her about his name. The following day, she told everyone *(Q85 – 92)*. He knew she had told everyone because everyone was making fun of the appellant and beating him up. He did not tell his teachers because the children threatened him.

32. In his witness statement dated 2nd April 2019, the appellant refers to his friendship with Erica, and claims that during the Home Office interview he did not want to talk about Erica or say her name because he found it really painful and difficult to think about the things that happened to him due to Erica. That is in contrast to the claim made during the interview itself in which the appellant initially claimed that he could not remember or had forgotten the name, and then said "... *I don't know exactly what her name was Erica? I don't know exactly ...".*

33. Notwithstanding the appellant's age at the time, it is simply not credible, even to the lower standard, that the appellant could not recall, when asked in interview, the name of the friend in whom he had confided. Although I am prepared to accept that a 15-year-old might not be able to give a full and coherent account of events, and that an interviewer might need to probe further to draw out relevant information, it is not credible that the appellant should be unable to remember the name of the one individual

that he confided in, and who, on the appellant's account, disclosed what he had said to her in confidence, to others the following day. If there were any truth in the appellant's account of events, the name of the so-called friend that he confided in, would be a name that he could not forget, given his account of what followed.

34. The appellant's account of the boy that he liked and what he had discussed with his friend is also internally inconsistent. In his witness statement dated 20th December 2016, the appellant claims that he had feelings for a boy *"in my year at school"*. In interview *(Q.86)* when asked who the boy was, the appellant said: *"... he wasn't in my class room and I asked her about his name, and she told everyone".* He went on *(Q.88)* to say that he asked her (i.e. Erica) about *"his name"*. In his witness statement dated 2nd April 2019, he claims, at [3], that at the beginning of year nine, he started to have feelings for *"a boy in my class....The boy I liked was called Ervin.".* At paragraph [4], of the same statement, the appellant claims "*Ervin was in the other Year 9, so we weren't in the same class for anything, but I used to see him at break times ...".* At paragraph [7], he stated that he told Erica that he liked "*a boy in our class" and* goes on to say that he said to her "*Do you know Ervin?. She said yes".* At paragraph [8] of that statement he claims, "*When I told Erica that I liked Ervin, it was towards the end of the school day".*

35. My view of the appellant's evidence was reinforced by the way in which the appellant gave oral evidence before me regarding a relationship that he entered into with 'Ryan' in September/October 2020. The appellant's evidence regarding that relationship was very vague despite Ms Radford using her best endeavours to draw out evidence by asking the appellant how he and Ryan had spent their time together, where they went, and how they behaved together in public. All that the appellant was able to say about that relationship was that they stayed indoors, watched movies and went bowling. The appellant claimed that he had told some of his friends about that relationship and they started living together one or two weeks

after becoming a couple, but there is no evidence before the Tribunal of the appellant having shared accommodation with 'Ryan' for 2 to 3 months in Oxford, or from any of the friends that were aware of that relationship. There is also no evidence before me from the friend with whom the appellant went to live after the breakdown of his relationship with Ryan. In his oral evidence the appellant said he did not know that a statement was required from his friends and *"didn't know it is important"*. It is evidence that would readily be available, and the appellant has been aware for some time that the respondent does not accept his claim that he is gay.

36. The appellant is now an adult and the claimed relationship with 'Ryan' was entered into when the appellant was, or had just turned 19, and after the appellant had been living in the UK for almost four years. The appellant also said that he did not wish to reveal Ryan's surname and that he needed to keep it private. It was only after I assured the appellant that an anonymity direction is in place preventing the appellant from being identified and asked him whether he maintained that he was not prepared to disclosed Ryan's surname that the appellant confirmed that the surname is "Holland". The appellant did not explain why he needed to keep the surname private, if, as the appellant claims, his friends were aware of that relationship, and the appellant had previously posted pictures of Ryan with the appellant on the appellant's social media. Observing the appellant give evidence, I was left in no doubt that the appellant was, as Mr Duffy submits, 'making it up as he went along'.

37. Equally, I do not accept the appellant's account of what he claims, followed the revelation of his sexuality by the friend that he confided in, in Albania. He claims that word spread because students told their parents, and eventually his parents found out. He claims his parents asked him to change his thinking and reacted very badly. On occasion, he claims, they physically harmed him and kept insisting that he should change. The appellant claims he left Albania on 19th July 2016 because his father told him he should leave when he realised that the appellant was not going to

change. He left Albania and travelled to France with his father. He claims he did not know what his final destination was going to be. He said that his father took him to France and told him he should never return to Albania. After a month with three other Albanians in France, he followed them to the UK by lorry. He claimed in interview, (Q.140), that he did not know that he was coming to the UK, but on arrival (Q.145), he telephoned his uncle and his uncle picked him up. He said (Q.147) that his uncle is aware that the appellant is interested in boys, and his reaction was that it is the appellant's life, and he was not against it.

38. I have considered the appellant's account that his father took him to France, aged 15, and simply abandoned him there, with €200, without the appellant having any idea what he would do or where he would end up. On its own that it is not implausible, but here, I do not accept the core of the appellant's account that he is gay and that he had confided in a friend as he claims. It follows that I reject his account that word of his sexuality spread because students told their parents, and eventually his parents found out. I reject the appellant's claim that he was abandoned in France by his father as he claims. I do not accept the appellant's claim that at the airport in France, his father did not tell him where he should go, or what he should do, or that he was told "never come back". The appellant claims that in France, he found a group of three Albanians who agreed to help him. In his statement dated 20th December 2016, the appellant claimed that 'two of them were around my age, and one of them was older'. He claims that they followed the oldest member of the group as he knew where to go. The appellant's account of events in France and of his journey to the UK is vague. The claim made by the appellant is, even to the lower standard, not credible. There is no evidence before me about the way in which the appellant was able to fund his journey to the UK or to support himself in France with the limited sum he claims he was left with. The appellant claims in his statement dated 20th December 2016 that when he got off the lorry in Oxfordshire and realised he was in England, he asked one of the other Albanians if he could use their phone to contact his

uncle. He claims he had his uncle's number with him on a piece of paper. If, as the appellant claims, he was first told that he would be leaving Albania a few days before the flight and he really did not know where he was going, or what he would do when he got there, it is not credible that the appellant would just happen to have a piece of paper that had his uncle's contact details. It is in my judgment beyond co-incidence that the appellant would have the telephone number of his uncle, who lives in the UK, and that upon arrival in the UK, the appellant was able to establish contact with his maternal uncle.

39. Following the interview, under cover of a letter dated 24th March 2017 the appellant's representatives provided a statement from VH together with background material in support of the appellant's claim for international protection. A copy of the statement is to be found at Annex H of the respondent's bundle. VH confirms the appellant is the son of his sister. He states the appellant arrived in the UK in August 2016 and made contact with him on 21st August 2016. He claims he was surprised to hear from the appellant as he had no idea the appellant was coming to the UK. VH and his wife initially thought they might be able to look after the appellant, but they were not able to support him for longer than a month and they sought the assistance of Oxfordshire social services. He claims that until 2015, he had a good relationship with his sister, and they were in contact quite often. He states that during 2015 it became clear that the appellant's parents were becoming increasingly concerned and negative about the appellant's sexuality and expressing their concerns to him. He was surprised by their reaction, but appreciated that the area they live in, is very traditional and old-fashioned. He claims that he stopped speaking to his sister after October 2015, as he disagreed very strongly with the views they were expressing, and he did not feel comfortable discussing them with her anymore. He claims that after he had taken the appellant to social services, he tried to contact the appellant's parents but the number that he has for his sister, is no longer connected. He states that in any event, he does not feel comfortable talking to them and the appellant does

not want to get in touch with them. He states that he has not spoken to the appellant in much detail about his sexuality but has told him that he is here for the appellant, and he must be who he wants to be, and not worry about his situation. VH confirms that the appellant comes to stay with them every weekend from Saturday morning until Sunday evening. He states that they are currently going through a process with social services to enable the appellant to live with them on a long-term basis. He states; "I feel I have a real duty of care towards [the appellant] and I care very much about his future and his safety.".

40. The statement from [VH] dated 9th April 2019 is unsigned but states "Agreed by phone". The statement appears to have been prepared in readiness for the hearing before the First-tier Tribunal previously. VH stated that due to personal circumstances, he is unable to attend the hearing. He states that his wife and children are Polish nationals and are in Poland where his son is receiving therapy and support, having been diagnosed with severe autism. That was the position in April 2019. I was informed by Ms Radford that the appellant's uncle has not been in touch with the appellant since the last hearing. There is no evidence before me concerning the breakdown of the relationship between the appellant and his uncle and aunt, or any explanation for why they no longer see each other. The failure of VH to attend the hearing before me means the respondent has not had the opportunity to test his evidence and impacts upon the weight that I attach to his evidence. I am not prepared to attach any weight to an unsigned statement, the author of which has failed to attend before me to give evidence.

41. For the avoidance of any doubt, although I have rejected the appellant's claim that he has had a short relationship of about three months duration with Ryan, in rejecting the appellant's claim that he is gay, I have borne in mind that the fact that an individual does not overtly engage in social activities focused upon their own sexual orientation or, indeed, form a sexual relationship with a person of the same sex, is not a safe indication,

one way or another, of their sexuality. I have considered the appellant's claim as a whole and in the end, I am not satisfied, even to the lower standard that the appellant is gay, as he claims. I do not accept his account of events in Albania and even to the lower standard, I find the appellant has advanced an entirely unfounded claim in a cynical attempt to join his uncle in the UK. Having rejected the core of the appellant's claim I do not accept the appellant's claim that he no longer has any contact with his family.

42. I simply add that even if I had accepted the appellant is gay and that he would wish to openly express his sexuality, there is no evidence before me which even begins to establish the appellant would be traced to Tirana by family members or others who would wish him harm. The appellant's family have, even on the appellant's own case, no particular influence and at its highest, the evidence of the appellant is that he has family in Tirana. There is no evidence before me that any relatives the appellant has in Tirana, have expressed any hostility towards the appellant, and there is nothing to suggest that they would not share views similar to the views expressed by the appellant's maternal uncle. The relevant country guidance also establishes that there exists in Tirana, a generally effective system of protection should an openly gay man face a risk of harm in that city or from elsewhere in Albania. Although an openly gay man may face discrimination in Tirana, particularly in the areas of employment and healthcare, whether considered individually or cumulatively, in general the level of such discrimination is not sufficiently serious to amount to persecution. Discrimination on grounds of sexual orientation is unlawful in Albania and there are avenues to seek redress. Same-sex relationships are not legally recognised in Albania. However, there is no evidence that this causes serious legal difficulties for relationships between openly gay men.

43. The country guidance establishes that in general, it will not be unduly harsh for an openly gay man to relocate to Tirana. The appellant is now a

healthy young male and although he claims that relatives in Tirana would not be able to look after him in Tirana, he now has no particular need to be looked after. The appellant is plainly a resilient individual who was able to make the journey from France to the UK, as a child, on his own, and has been able to establish himself in the United Kingdom with limited support. The initial support the appellant received from his maternal uncle appears to have ended, without any adverse impact upon the appellant. There is nothing in the evidence before me to suggest that internal relocation to Tirana would be unduly harsh, even if the appellant could not return to his family home in Peshkopi.

44. It follows that in my judgment, the appellant will not be at risk upon return to Albania and is not in need of international protection, whether as a refugee or on humanitarian protection grounds.

45. The appellant's Article 8 claim is set out in the appellant's skeleton argument, although there was no attempt to elaborate upon that claim at the hearing before me. The appellant has lived in the UK since his arrival in August 2016, aged 14. I am satisfied that the appellant will undoubtedly have established a private life in the UK and Article 8 is plainly engaged. I also find that the decision to refuse the appellant leave to remain has consequences of such gravity as to engage the operation of Article 8. I accept that the interference is in accordance with the law, and that the interference is necessary to protect the legitimate aim of immigration control and the economic well-being of the country. The issue in this appeal is whether the decision to refuse leave to remain is proportionate to the legitimate aim, which requires a fact sensitive assessment.

46. Although the appellant's ability to satisfy the immigration rules is not the question to be determined, it is capable of being a weighty factor when deciding whether the refusal is proportionate to the legitimate aim of enforcing immigration control. The appellant claims he would face very significant obstacles to his reintegration in Albania because of the

discrimination, harassment and threats of violence he would suffer as a gay man. For the reasons I have already set out in some detail when considering the appellant's claim for international protection, I reject the appellant's claim that he is gay, and I have rejected his account of events leading to his arrival in the UK. In order to establish that there would be very significant obstacles to the appellant's integration into Albania, the appellant would have to establish something more than mere inconvenience or upheaval. I do not accept that there are very significant obstacles to the appellant's reintegration in Albania for reasons that I have already set out.

47. In reaching my decision, I have also had regard to the public interest considerations set out in s117B of the Nationality, Immigration and Asylum Act 2002. The maintenance of immigration control is in the public interest. I remind myself that s117B(4) of the 2002 Act provides that little weight should be given to a private life established by a person at a time when the person is in the United Kingdom unlawfully. I acknowledge that that is not to say that I can attach no weight to the private life the appellant has established during the several years he has lived in the UK.

48. The appellant plainly spent the early years of his life in Albania with his family. On the findings that I have made regarding the claim for international protection, I find there is no reason why the appellant cannot return to his family, or alternatively, live in Tirana should he wish to. I have no doubt the appellant would prefer to continue his life in the UK and that the appellant considers the UK to be his home and where his future lies. I have carefully considered whether despite my finding that the appellant cannot satisfy the requirements of the immigration rules, the decision to refuse leave to remain is nevertheless disproportionate.

49. Having had due regard to the appellant's connections to the UK and the length of time he has been in the UK, including factors such as his age upon arrival, I find the appellant's protected rights, whether considered

collectively with rights of others that he has formed associations with, or individually, are not in my judgement such as to outweigh the public interest in the appellant's removal having regard to the policy of the respondent as expressed in the immigration rules. I am satisfied that on the facts here, the decision to refuse leave to remain is not disproportionate to the legitimate aim of immigration control. In the circumstances I dismiss the appeal on Article 8 grounds.

Decision

50. The appeal is dismissed on asylum and humanitarian protection grounds

51. The appeal is dismissed on Article 8 grounds

Signed **V. Mandalia** Date 1st March 2022

Upper Tribunal Judge Mandalia