



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

Appeal Number: AA/12981/2015

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 12th July 2016

Promulgated

On 14th July 2016

Before

UPPER TRIBUNAL JUDGE SMITH

Between

**MR G P
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Khan, Counsel instructed by Malik and Malik solicitors

For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity order was made by the First-tier Tribunal. As this is a protection based claim, I consider it appropriate that the anonymity direction is continued.

DECISION AND REASONS

Background

1. The Appellant appeals the decision of First-tier Tribunal Judge Talbot promulgated on 10 March 2016 (“the Decision”) dismissing his appeal against the Respondent’s decision dated 17 March 2015 directing his removal to Albania and refusing his asylum claim.

2. The facts of the Appellant's claim are as summarised at [6] to [11] of the Decision. The Appellant's account is accepted by the Respondent as true and was not disputed before the Judge ([16] of the Decision). The appeal turns therefore on issues of sufficiency of protection and internal relocation. The Judge dismissed the appeal finding there to be a sufficiency of protection.
3. Permission to appeal was granted by Upper Tribunal Judge Warr on 31 May 2016 on the basis that the Judge may have wrongly compartmentalised the issues of the threat from the gang into whose grasp the Appellant had fallen and the threat from his own father who was responsible for trafficking him in order to pay off his debt to the gang.
4. The appeal comes before me to determine whether the Decision contains a material error of law and, if I so find, to either re-make the Decision or remit to the First-tier Tribunal for re-hearing.

Submissions

5. Mr Khan argued the case on three grounds. In relation to the first which is the compartmentalisation issue to which I have referred above, Mr Khan pointed out that it was important that the Judge considered the two threats together because it is the Appellant's case that he would be re-trafficked by his father for financial reasons. Accordingly, he would fall back into the hands of the gang he fears because his father would place him in the way of that threat. He would be at risk from his father because, if he turned back to his family for support as the Judge envisaged, his father would come to know of his return. Mr Khan pointed out that Albanian society is patriarchal and the Appellant's mother was accepted to be in an abusive relationship with his father so if he looked to his mother for support, his father would come to know of his return and he would be within the reach of the gang. His family is therefore the source of the Appellant's problem and not part of the solution as the Judge appears to envisage.
6. Mr Khan accepted that sufficiency of protection is at the core of this appeal. His first submission and his second ground is that the Judge has misdirected himself at [24] of the Decision where he states himself to be "satisfied (even to the lower standard of proof) that there would be 'Horvath-standard' sufficiency of protection for this Appellant on his return to Albania". Mr Khan submitted that insofar as this reflects a finding by the Judge that the burden of showing a sufficiency of protection to the standard only of reasonable likelihood has been met, that is an error of law. As Mr Khan pointed out, the burden is on the Appellant to show that there was a real risk that he would not receive adequate protection (by reference to what is said in Bagdanavicius [2003] EWCA Civ 1605).
7. In relation to the third ground, Mr Khan accepted that this case overlaps with TD & AD. He pointed out however that the focus of those appeals was the position of female victims of trafficking. There was therefore a

focus on such things as the availability of shelters for women. Those would not be available to the Appellant. The country guidance does not deal with male victims of trafficking and TD & AD is not therefore wholly relevant.

8. That the Appellant is a victim of trafficking was accepted by the Respondent and the Judge. Mr Khan accepted that, insofar as the case of TD & AD (Albania) [2016] CG UKUT 00092 is relevant, that shows that the Albanian authorities have made significant efforts to improve their response to trafficking. However, he pointed to the need to consider the particular circumstances of the Appellant, especially when dealing with the risk of re-trafficking. Those factors include the support network available to the Appellant. Mr Khan submitted that, in this case, the Appellant cannot rely on his family network (for the reasons outlined at [5] above). He originates from the North of Albania and that is the area where the gang is based. He could not relocate there. His father is in Tirana and he cannot go there. Mr Khan submitted that, in light of what is said at [18] of the Decision in relation to corruption of the authorities, there had been no proper consideration of whether the Albanian authorities would be willing and able to assist the Appellant against the composite threat identified.
9. Mr Kotas began his submissions by pointing out that, in relation to sufficiency of protection, the Judge at [16] had set out the appropriate test by reference to Bagdanavicius [2003] EWCA Civ 1605. It was inconceivable that, having referred to the correct test at [16] of the Decision, he would then have misdirected himself some eight paragraphs later.
10. In relation to the third ground, Mr Kotas submitted that it was grossly unfair for the Appellant to criticise the Judge's reliance on TD & AD since it was the Appellant's representative who placed reliance on that decision. He pointed out that, in any event, the reason that the Judge placed reliance on that decision related to sufficiency of protection which was relevant. Furthermore, the Judge did not treat that decision as determinative but instead went on to consider at [18] that issue in the context of the other background evidence.
11. The main focus of Mr Kotas' submissions was on the first ground. Mr Kotas made the point that the Appellant's claim is that there are two distinct issues - the risk from the gang and the risk from his father albeit that the former is said to emanate through the latter. As sufficiency of protection is the focal issue in the appeal, he then took me to the way in which the Judge dealt with those issues. At [20] the Judge found that there was no real evidence as to the size and reach of the gang. He finds that "no reliable conclusion can be formed as to the size and the reach of the gang." There is no suggestion that their reach extends to Tirana and that they would themselves be in a position to target the Appellant there with the connivance of the authorities. The Appellant would therefore be able to look to the authorities for protection.

12. Mr Kotas then referred me to [21] of the Decision where the Judge deals with the risk from the Appellant's father. He pointed out that the Appellant's father is an unemployed alcoholic who is also a bully. The Judge finds however that "There is no evidence that he was a powerful man in the wider society". Although the Judge records the Appellant's fear that he would not receive protection against his father, it is not suggested by the Appellant that his father has any influence with the police. It is for that reason that the Judge says at [24] that he does not need to consider internal relocation and that the Appellant can return to Tirana.

Decision and reasons

13. I begin by considering the third of the Appellant's grounds. The Appellant relied on the case of TD & AD before the Judge. As such, there is no error of law in the Judge making reference to that case. The Judge recognised at [17] of the Decision that this decision had only some relevance because it concerned the trafficking of women and not that of boys for forced labour. Furthermore, the Judge went on at [18] to consider the issue of sufficiency of protection against the other background evidence. There is no error of law in his consideration of that evidence and he was right to make reference to the country guidance case whilst recognising the limitations of that in the instant case (particularly when that was the course urged upon him by the Appellant's legal representative).
14. There is no merit either in the second ground. Although I accept that the sentence at [24] which I have cited at [6] above may be infelicitously worded, it is clear in the context of the overall Decision that the Judge recognised that what he needed to consider was the availability and sufficiency of protection which applied in this case and whether that reduced the risk to the Appellant such that he is not entitled to international protection (see in particular [16] of the Decision).
15. Mr Khan did not direct my attention to any particular background evidence which showed that the Albanian authorities would not be able and willing to protect the Appellant. Aside the references in the background material to corruption and bribery which are highlighted in the skeleton argument before the Judge and to which he alludes at [18] of the Decision, the other background evidence relied upon does not support a finding that the Judge has failed to properly have regard to the position as set out in the background evidence. I refer in particular to the extract from the Respondent's Country Information and Guidance Report dated 26 August 2015 which is cited in the Appellant's skeleton argument at page 5 as follows:-

"2.1.5 In general Albanian authorities are able and willing to provide protection to a person fearing non state agents or rogue state agents; however this is dependent on the particular circumstances of the case and the profile of the person. Each case must be determined on its own facts. The onus is on the applicant to demonstrate that the state is not willing and able to provide effective protection."

I have considered the marked up passages in the Appellant's bundle of background evidence. There is nothing in those extracts which displaces the Judge's findings.

16. I turn finally to the first ground which is the main basis on which permission was granted. In order to consider the complaint made, it is helpful to set out in full what is said by the Judge when dealing with the risk on return, in particular the sufficiency of protection available to the Appellant:-

"[20]The Appellant fears the gang that operated the cannabis factory. He believes that the gang are a large gang who have the power and influence to pursue him and punish him wherever he was in Albania. The Appellant was threatened and ill-treated by the gang and it is hardly surprising, in the context of this forced detention in the house, that he would have been sufficiently intimidated to believe in their power and reach. However, when he was asked questions at his interview as to the basis for such a belief, the Appellant was quite vague. He was unable to say how many people were involved in the operation beyond saying that there were *'quite a few people around'*. He said that there were *'a lot of houses used for the storage of goods for the gang and other groups engaged in the lucrative cannabis business in the area'* but the Appellant was himself confined to the house and can hardly have been in any position to gauge the size of the operation. I have to conclude that no reliable conclusion can be formed as to the size and reach of this gang. This is a relevant factor both in terms of the ability of the gang to trace the Appellant and the ability of the gang to resist enforcement by the police and judicial authorities. It may also be relevant that the gang appear to be based in a remote area in the north of the country and even if they have some influence in this immediate locality, there is no evidence that this extended to Tirana where the Appellant is from.

[21] The Appellant also fears his father. The Appellant's father is an unemployed construction worker and his wife is a supermarket cleaner. He also appears to be a bully who beat, threatened and intimidated both his wife and children. There is however no evidence that he was a particularly powerful man in the wider society. The Appellant believes that the police could not protect him from his father. The Appellant said at interview *'my understanding was that my father knew some of the police people'* but provides no details to substantiate this belief. In his witness statement he says that his mother complained about her husband's conduct to her relatives and that they complained to the police (which is somewhat inconsistent with his interview evidence when he said that his mother complained directly to the police). This inconsistency indicates to me that the Appellant was not really clear about what complaints had or had not been made to the police and I am not satisfied (even to the lower standard of proof) that the police would be powerless to take action against the Appellant's father or that he had any particular influence with the police (either locally or outside his immediate locality). I also note that his influence with the police was not sufficient to prevent him from being prosecuted for a road traffic offence. "

17. The case as urged on me by Mr Khan is in reality this. He says that this is a drugs gang with a number of houses producing cannabis in the north of Albania. As such, they are likely to have some influence with the police. However, the prior point is whether the gang would either be aware of the Appellant's return to Tirana or would seek him out even if they were aware of it. It is not the Appellant's case that he was targeted by the gang directly but rather that his father put him into their grasp. As such, the real risk emanates from the Appellant's father. Mr Khan says that this is a risk that the Appellant's father, who undoubtedly will still need to use the Appellant as a means of earning money to pay off his debts, will re-traffic him. Mr Khan argues that the Appellant's father will become aware of the Appellant's return to Tirana because he will need to turn to his family there for support and the Appellant's father is likely to find out he has returned and will target him.
18. That is the case which the Judge addresses at [20] and [21]. The fact that the two threats are dealt with individually does not undermine the Judge's conclusions that, in the case of the gang, they are unlikely to become aware of the Appellant's return (or even be interested in it) whereas in relation to the risk from his father who might be tempted to return him to the gang, the evidence shows that the authorities are willing and able to protect the Appellant against the risk that he will be re-trafficked. There is insufficient evidence to show that the protection afforded by the authorities is undermined by corruption or bribery given the Appellant's father's circumstances.
19. The key issue, as the Judge noted is whether there is a sufficiency of protection against either or both of the father and the gang. Insofar as Mr Khan relied on what is said at [23] about the availability of a support network for the Appellant in Albania, the fact that the Appellant's father might, by reason of that family support, become aware of the Appellant's return does not alter the conclusion that the authorities could still protect the Appellant if his father did find out and come after him.
20. Furthermore, that paragraph is a focus on the individual factors in the Appellant's case based on what is said in TD & AD. The availability of family support is only one factor. As is also found in that paragraph, the Appellant is a young man in good health with a reasonable level of education who has lived alone in the UK for some eighteen months and travelled abroad with his football team to other countries. It is implicit in those findings that he would not need to turn to family for support if he did not wish to do so. It is also the case that not all of those family members are based in Tirana (the Judge mentions for instance his cousin who assisted him to leave Albania).
21. For the foregoing reasons, I find that there is no error of law in the Decision. It follows that I uphold the Decision.

Decision

I am satisfied that the Decision of the First-tier Tribunal does not contain a material error of law. The Decision of First-tier Tribunal Judge Talbot promulgated on 10 March 2016 dismissing the Appellant's appeal is therefore maintained.



Signed
Upper Tribunal Judge Smith

Date 13 July 2016