Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/12842/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12 September 2016 and 20 December 2017	**On 13 November 2019**
Further submissions on 18 June and 12 July 2019	

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

D--- D---
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
12 September 2016
For the Appellant: Dr S Chelvan, Counsel, instructed by AT Legal Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer
20 December 2017
For the Appellant: Dr S Chelvan, Counsel, instructed by AT Legal Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

Paragraphs 1-43

REASONS FOR FINDING ERROR OF LAW AND DIRECTIONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to

lead members of the public to identify the respondent. Breach of this order can be punished as a contempt of court. I make this order because the appellant is the victim of domestic violence and the decision requires some consideration of her child. I see no legitimate public interest in knowing the identities of the people concerned and people whose cases require them to give very personal details about their histories should not expect their identities to be broadcast unnecessarily.

2. The appellant is a citizen of Albania who appeals with permission a decision of the First-tier Tribunal dismissing her appeal against a decision of the respondent that she is not entitled to international protection.

3. It is a feature of this case that the respondent accepted expressly that the appellant was a victim of domestic violence at the hands of her estranged husband. This is clear beyond all doubt at paragraph 18 of the "Detailed Reasons for Refusal".

4. The same document summarised the appellant's case.

5. It said that the appellant is an Albanian national who was born in 1984 and who married in 2001 but the relationship has ended and she wanted to divorce her husband. They had a son, L--- and he was with her in the United Kingdom. The child was born in 2003 and so is now 13 years old.

6. According to the summary she had described her marriage as an arranged marriage and said that her husband became violent towards her soon after the wedding. She remembered the date when she first suffered violence at her husband's hands. He hit her on 10 November 2001. He slapped her face and told her to obey him when she objected to rising at 6 o'clock in the morning. She was asked if she was injured in the attack and she said: "The injury was that I was quite surprised that he was hitting me, I was only 17 at the time." (Question 22 of interview). She accepted that the pain was more mental than physical but said that the incidents of violence continued. She came to realise that he was a violent man and although she intended to obey him "he would always find something, a word or anything, he didn't want the women to talk". She said that initially violent episodes occurred every two months and were limited to a slap in the face. Her husband started to incur gambling debts and he became more violent. She said "he was no longer just slapping me, he was punching me and hard." She complained of bruises and pain. She eventually found the courage to leave in August 2014. Asked how often he would beat her during the twelve years that they were together she said "I could say every month because he then continued to drink alcohol".

7. She complained that she sometimes has suffered nosebleeds and bruises on the body and pain to the point that she could hardly move. On one occasion he slapped their son because the boy protested about his father hitting the appellant.

8. She supported her case with a statement dated 22 September 2015. There she explained that there was a celebration on 12 April 2001 to mark their betrothal and on 19 July 2001 their marriage was registered at the local authority and she was "forced" to move into her husband's family home. She gave more details of her experiences of violence at her husband's hands. She repeated her account of the first incident on 10 November 2001. She said the second incident was on 4 March 2002

when he slapped her because she complained of the time he had spent out of the home. She said "I began to learn that I was going to be controlled by G---".

9. She then recalled how on 10 October 2002 which had been their first week in their home away from his parents he came home drunk and slapped her because dinner was not ready for him. She described the incident as "different" and I understand that to mean more threatening.

10. Their son was born in June 2003. In July 2003 she found him hunting out her gold necklace and he punched her in the stomach so that she fell to the floor. She said that was the first time he "hit me properly". This was to distinguish this attack from other occasions when she had been slapped. She then explained how he was gambling too much and then drinking too much and hitting her. She gave accounts of other occasions when he slapped her. At paragraph 40 she said:

> "He would carry on his normal ways: work, gamble, drink and come home. He was a mess. He would come home and cause arguments and treat me like a slave. He would continue to hit me – I don't even know why he left me if he did this to me. He told me once that 'he hit me because he loved me'."

11. She then explained how she decided enough was enough and she had to flee to the United Kingdom with their son. It was her case that in the eyes of her mother and father she was given to her husband's family and it would be shameful conduct for her to complain about domestic violence. She has compounded the sense of shame by leaving her husband's family. She also explained that she considered the police to be so corrupt that they would offer her no help. She could have no dealings with the authorities without paperwork which would identify her and her son to the authorities so that news of their whereabouts might reach her husband. She then supplemented that statement in the statement relied upon at the hearing of her appeal. She corrected some mistakes which it considered. The appellant also gave oral evidence but was stopped by the Tribunal from introducing points that had not been raised in the papers.

12. The Tribunal accepted that the appellant had been the victim of violence and ill-treatment. It noted the detailed accounts given but concluded from considering the evidence that the aggressive acts:

> "appear to occur as flashpoints every few months, rather than frequent or commonplace incidents. There was no mention or hint of sexual violence. Nor, as noted above, was there any suggestion that the marriage was forced. It appears to have been arranged and celebrated in the traditional way, which suggests that the appellant at least acquiesced in it."

13. At paragraph 51 the Tribunal rejected the suggestion that the marriage was forced or that every act of intercourse in the marriage was an act of rape. The Tribunal said at paragraph 51:

> "There was certainly physical violence, and we accept the incidents described by the appellant, but we do not accept that they reached such a pitch as suggested at the hearing".

14. The Tribunal then rejected the contention that the appellant's husband had a cousin who was "high up" in the police force in Albania. It accepted that there was a cousin who was a police officer but no more. The Tribunal did not accept that there was any real prospect of the appellant's return coming to the attention of her husband or

family by reason of gossip. The Tribunal were satisfied that Albania was just too big for that to be a realistic possibility.

15. The Tribunal did not accept that the appellant's husband, if he still lived in Albania, would have any interest in the appellant now.

16. The Tribunal did not accept that the appellant was a member of a particular social group.

17. Paragraph 60 of the determination has been criticised and I set it out below:

> "In any event, the degree of ill-treatment required to amount to persecution is also a high one. It is defined in Article 9 of the Qualification Directive, which refers to acts which are sufficiently serious by their nature or repetition to constitute a severe violation of basic human rights and can include acts of physical or mental violence, including sexual violence. In the appellant's case the psychological effect of living for a prolonged period with a man given to occasional violent outbursts, together with a concern for her son, may have been more telling than the immediate physical effects. Making every allowance for that mental toll, however, given our findings about the nature and extent of these adverse and the fact that it did not include sexual violence, we cannot accept that it involved such to violation of basic human rights as to amount to persecution." [The grammar was adrift in paragraph 60].

18. The Tribunal accepted that the appellant could not return to live with her parents in Burrel but found that she was not afraid of the authorities in Albania. At paragraph 73 of its decision the Tribunal found that internal relocation would be unduly harsh.

19. The Tribunal decided that the ill-treatment was not sufficiently severe to amount to persecution. The Tribunal did not accept that the attacks amounted to a "violation of basic human rights as to amount to persecution".

20. In any event the Tribunal decided that there was sufficiency of protection in Albania. It had never been her case that she was frightened of approaching the authorities.

21. The Tribunal then said that even if it was wrong on that point she could return to Tirana without risk. The Tribunal accepted evidence, particularly summarised in **DM (Sufficiency of Protection – PSG – Women - Domestic Violence) Albania CG [2004] UKIAT 00059**, followed in **MK (Lesbians) Albania CG [2009] UKAIT 00036,** and concluded that, save for some traditional families in the North, which was not a consideration in this case, societal attitudes in Albania were changing. Additionally there was no evidence that the police would not react appropriately if they were involved.

22. The Tribunal were satisfied that the test in **Horvath v SSHD [2000] 3 All ER 577** was met and there was effective protection available in this case.

23. For the sake of completeness, in case an alternative remedy was needed, the Tribunal then directed itself to the possibility of internal relocation. It was Dr Chelvan's case before the First-tier Tribunal that the respondent had accepted that there was an insufficiency of protection in Tirana (see paragraph 59 of the respondent's Detailed Reasons for Refusal). The Secretary of State did not argue against this submission (see paragraph 69 of the Decision). However it clearly is not the case that the respondent accepted that effective protection was not available in Tirana. The

respondent was considering how internal relocation might work, not deciding that it was necessary.

24. The Tribunal looked for other places the appellant might go. Having considered the evidence, and particularly the guidance given in **MK** the Tribunal was satisfied that internal relocation away from Tirana would be unduly harsh but that the Appellant could reasonably be expected to live as a single woman with a son in Tirana.

25. The reality is that there was no place where she could establish herself outside Tirana.

26. The appellant did not need humanitarian protection. In summary, the Tribunal did not accept there was a real risk of harm from the appellant's estranged husband but even if there were it would not be persecutory or sufficient to warrant humanitarian protection and in any event there was a sufficiency of protection available.

27. In short, the appeal was dismissed.

28. Permission to appeal was granted by First-tier Tribunal Judge Ransley on all grounds. In outline, it was the appellant's case that the First-tier Tribunal was wrong in law to say that the appellant was not a member of a particular social group, that the Tribunal was wrong in law to find that the appellant had not been persecuted when she had been the victim of domestic violence throughout her fourteen-year marriage and the Tribunal was wrong in law to find there was effective protection in Albania. It was also wrong to rely on the decision in **MK (Lesbians) Albania** because it had been set aside by the Court of Appeal.

29. I agree that the Tribunal erred when it said the appellant does not belong to a particular social group. The appellant's grounds refer to the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 and particularly Regulation 6(d) which says that:

> "a group shall be considered to form a particular social group where, for example: 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 that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society."

30. There are two ways in which the appellant could form a social group. Possibly because she is a woman and women can be perceived as weaker or somehow less worthy than men and but more appropriately in this case she could be seen as a woman who has been the victim of domestic violence and, according to the evidence, at risk of ostracisation because of her broken relationship if she lives outside it and more violence if she remains within it. At the risk of being trite, a person is not entitled to international protection by reason of being a member of a particular social group. Rather, if a person needs international protection then the kind of protection to which she is entitled depends on whether or not she is a member of a particular social group. If she is, and if that is the reason for her persecution, then she is a refugee. If she is not then she is (probably) entitled to some other kind of protection.

31. I have read the respondent's reply. It is not helpful on this point. Paragraph 5 is bizarre. I mention it only to say that Ms Isherwood disavowed it hastily. It was

settled by an experienced Presenting Officer who I think on this occasion must have been distracted when he settled the grounds. Being a refugee and being a victim of domestic violence are not mutually exclusive.

32. Similarly there is nothing in the objection to the appellant relying on an unreported decision. In any event the grounds do not really "rely" on such a decision. That is overstating the position. All the grounds do is refer to a properly identified unreported decision that is helpful. It is not suggested that it amounts to a novel proposition of law. It may have been better not to have been mentioned it but this is a peripheral point.

33. I have read DM (Sufficiency of Protection-PAG-Women-Domestic Violence) Albania CG [2004] UKIAT 00059. Dr Chelvan, rightly, points out that the definition of PSG is now set out in Regulation 6(1)(d) of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006. Regulation 6(1)(d)(ii) prescribes that "the group has a distinct identity because it is perceived as different by the surrounding society". I accept the evidence of Dr Antonia Young that such victims who left would be "branded for life" as someone who has dishonoured her community. The extent of that branding will no doubt vary in each case and not all victims of domestic violence will need international protection but I am satisfied that the group is distinctive enough to amount to a particular social group.

34. I find that the First-tier Tribunal was wrong to conclude that the appellant had not been the victim of persecution. I do not find it necessary to decide if every sexual act in the course of the marriage was consensual or whether the appellant was in fact raped on any occasion during the marriage. Even if, as the First-tier found, the appellant had exaggerated the violence in the course of her marriage it was accepted that she had been repeatedly beaten in different ways on different occasions. In my judgment the severity of violence in a marriage is only one of the factors that has to be considered in determining if it is described properly as persecutory. Any violence between partners is to be taken seriously although some violence is plainly even much serious than others. A horrible element of domestic violence is not just the fact of the violence but the fact that it is inflicted in a relationship where the victim, usually but not always a woman, should be entitled to support and affection. When that is replaced by violent bullying and controlling behaviour it is horrible for her and there is clear evidence here of repeated nasty acts of violence intended to humiliate and overbear the victim. This is clearly sufficiently severe to amount to persecution. Again, I disagree with the First-tier Tribunal's findings to the contrary.

35. None of this is of any use to the appellant's claim to be a refugee if in fact there is effective protection available to her in Tirana. As is explained above, the First-tier Tribunal found that she could *not* be expected to remove. However, the Tribunal found that effective protection was available in Tirana. There were two objections to this in the grounds. The first is that the appellant could not afford state protection because she relied on her brother, who said he could not pay, and secondly because she has a relative who is a police officer who, it was said, would frustrate the ordinary operation of the law.

36. There is nothing irrational in the conclusion that the brother would help. He is not a rich man but he is in regular work. He said his income was at the order of £30,000 plus bonuses. He has supported his sister in the United Kingdom and it is a reasonable inference that he would continue to assist. I cannot agree that it is an error of law to decide in these circumstances that he would help.

37. The Tribunal considered carefully the evidence about the effectiveness of protection in Albania and noted the change in societal attitudes. At paragraph 64 of its decision it noted how in most cases there is effective protection. Importantly at paragraph 58 of its decision the Tribunal concluded that there was no risk to the appellant from her husband. They had been apart for nearly two years and there was no suggestion of any kind of contact or enquiry. I appreciate that does not address the possibility of the appellant eventually coming to the attention of her former husband and he feeling pressurised to react. However, the only objection to police protection was the appellant's contention that her husband had a relative in the police force who had sufficient rank to frustrate protection. This was not made out to the Tribunal. The Tribunal noted inconsistencies about the status of the relative and no attempt to find corroborative evidence. The appellant's brother's evidence was only recycling the appellant's own evidence and added nothing. The Tribunal did not accept any real chance of the appellant's husband's relative finding out about her. The appellant and her brother may genuinely believe that the relative would frustrate protection but there was no evidence to make that persuasive.

38. I have read Dr Antonia Young's report. It may be that the Tribunal underestimated the possibility of the appellant being identified to her former husband. The point being made in that report is that even in Tirana a lone woman, or a lone woman with a child, are unusual and therefore attract attention. They attract attention from the authorities when they arrive and their arrival is reported to their municipality. However, the Tribunal was very aware of the deficiencies of the security forces in Albania. It reminded itself of the **Horvath** test and considered other evidence before concluding that there is a sufficiency of protection and there is nothing in this case that would put it in a different category.

39. Criticism was made in the grounds of relying on the case of **MK** because, it is said, it can no longer be country guidance because it was remitted to the Upper Tribunal by the Court of Appeal but in fact not redetermined because the appellant was allowed to remain. That assertion is right in part. The decision in **MK** was overturned by the Court of Appeal and, following Dr Chelvan's submissions being brought to the attention of the responsible judges, I expect it to be removed from the list of Country Guidance cases.

40. The Respondent and the First-tier Tribunal relied on **MK (Lesbians)** to support the argument that a woman *could* live on her own in Tirana. At the risk of oversimplification, the First-tier Tribunal preferred the guidance in **MK** to the evidence of Dr Young. I cannot rectify that without giving the Respondent notice that MK is not good guidance.

41. It follows that I set aside the decision of the First-tier Tribunal.

42. I find that women who have been victims of domestic violence do constitute a particular social group in Albania. I accept the finding that there is effective protection available against violence by the appellant's former husband and the finding that this appellant cannot be expected to relocate outside Tirana.

43. I am not able to complete this Decision because the neither party, and particularly not the Respondent, could be confident that MK should not have been followed and so I adjourn the hearing for final determination. I set out below Directions for the next hearing.

Directions

44. No later than 5 days before the date fixed for next hearing this appeal each party shall serve on the other bundled copies (ideally secured with a treasury tag) of all documentary evidence on which the party seeks to rely, full witness statements drawn to stand as evidence in chief from any witness the party wants to call and an outline skeleton argument limited to deciding if the appellant risk persecution or other serious ill-treatment in the event of her return to Tirana as a victim of domestic violence. The submissions should concentrate on where she can live with her son and how they can support themselves.

Decision and Reason

45. This case has an unfortunate history. Its resolution has taken longer than it should have done and for this I apologise.

46. The above Reasons for Finding an Error of Law were sent after the hearing. They are reproduced here because they are part of my decision and I set them out at the beginning rather than appending them because they serve to introduce the rest of my decision.

47. The First-tier Tribunal found that there was effective protection in Tirana but the Appellant made two objections to that finding. First, the appellant said that she could not get access to protection because she needed money and second there was a relative who would frustrate the ordinary operation of the law.

48. The Tribunal was satisfied that effective protection is usually available in Albania and noted the change in societal attitudes. Particularly after two years separation there was no indication of any attempt to follow through any continued ill-treatment or grievance towards the appellant. I concluded in my findings that there was an error of law by my accepting that the appellant had been a victim of domestic violence and my accepting that victims of domestic violence constitute a particular social group. I accepted the finding that there was effective protection available against the appellant's former husband and the finding that this appellant could not be expected to relocate out of Tirana. The sole point of disagreement was whether the First-tier Tribunal was entitled to conclude that this appellant could be expected to establish herself in Tirana. That reasoning was based on a decision thought to be country guidance when it was not country guidance and so the Tribunal plainly erred by mistakenly following guidance that had been withdrawn. I thought that was all that there was to determine and that was what the case was about. I gave directions.

49. Although this was the only point of contention, matters dragged a little and then came before a different division of the Tribunal in October 2017. On that occasion Mr Melvin again appeared for the Secretary of State. It emerged at that hearing that there were problems in my directions. They were held to be ambiguous. The appeal came before me.

50. It is not helpful to any party to list every twist and turn in these proceedings. Upper Tribunal Judge Jordan gave directions at some stage broadly because the respondent was not quite ready. Eventually the matter came before me in December 2017.

51. There is a skeleton outlined from Dr Chelvan dated 14th November and supplementing one dated 27 October and written submissions from the respondent. I regret any lack of clarity in my directions. The hearing before me began with me having to make a ruling on the scope of the hearing before me on that day. This is the relevant part of what I said:

> Mr Melvin argued that all issues are unresolved because the decision of the First-tier Tribunal has been set aside. That is quite wrong. I have clearly ruled that the appellant has been a victim of domestic violence, that she is a member of a particular social group and that she cannot be expected to relocate outside Tirana.
>
> Mr Chelvan argues that it is open to him to argue that the appellant is at risk of violence from her former husband and cannot expect effective protection from the Albanian authorities. That is not what I said. Although I suggested that the First-tier Tribunal may have underestimated the threat from the former husband I found that the decision was that effective protection was available was lawful. This is what I meant at paragraph 42 when I said, "I accept the finding that there is effective protection available against violence by the appellant's former husband." It is in the same paragraph that I disagreed with the First-tier Tribunal and ruled that women who have been victims of domestic violence do constitute a particular social group in Albania and where I accepted the First-tier Tribunal's decision that this appellant cannot be expected to relocate outside Tirana.
>
> At paragraph 40 I noted that the First-tier Tribunal's finding that the appellant could live on her own in Tirana depended on the decision of the Tribunal in **MK** which was no longer reliable and so the decision on that point had to be made again. Whilst I identified that the appellant was a "victim of domestic violence", which she clearly is, my Directions that any further submissions "should concentrate on where she can live with her son and how they can support themselves" should have made matters clear but if that is not clear enough reading the Directions in the context of paragraph 40 where I said "The respondent and the First-tier Tribunal relied on **MK (lesbians)** to support the argument that a woman *could* live on her own in Tirana" would have settled the matter. I am aware that there is now better evidence that was available to the First-tier Tribunal about the standing of the appellant's relative in the police force. This was not before the First-tier Tribunal and could be a basis of a further application if necessary. If I am wrong then the remedy is elsewhere. We will now hear evidence and submissions directed to the difficulties the appellant and her son would face in living in Tirana and whether any difficulties were so great that the appellant was entitled to international protection as a result.

52. The appellant then gave evidence with the assistance of an interpreter.

53. The appellant had made statements dated 22 September 2015, 10 May 2016 and had been interviewed on 23 September 2016. I have considered all of these documents

but refer only to those points that I consider relevant to the decision that I have to make.

54. In her statement dated 22 September 2015 the appellant explained how she claimed asylum. Her brother had already left for the United Kingdom. He was later naturalised as a British citizen.

55. Then her main concern about returning was that the gossipy nature of Albanian society means that her presence will be reported to her husband. However, she also said at paragraph 96:

> "I have shamed my family and have added disorder to the family name. I am a woman and should only behave like one – this is the Albanian way. I have not followed this way. I have left my husband causing shame."

56. Although I am not making any findings here, I record the obvious point that at an early stage and before it became import in these proceedings, it was the appellant's contention that she had brought shame on her family and that was disadvantageous to her in Albania.

57. She appellant was interviewed about her asylum claim on 23 September 2016. Again her main concern in that interview was someone reporting to her husband her whereabouts but in answer to question 123 she was clear that she was estranged from her parents. They no longer spoke to the appellant and she no longer spoke to them.

58. A further statement is dated 10 May 2016. In that statement she disagreed with the respondent's contention that she could get work in Albania. She had had menial jobs. She said it was the culture in Albania to bribe an employer to obtain work. That made it hard to get work and caring for her son created additional problems.

59. The last statement is dated 15 October 2017. She then said that she had some contact with her mother in Albania but not her father. She had no contact with anyone in Tirana. She had had a friend in Tirana who she did not contact and who would be unable to help her because of cultural reasons. She would be frightened to go to Tirana in case she had contact with her husband. She also feared that she could be trapped into prostitution as a single woman and that concerned her not only on its own terms but for the fate of her son.

60. In answer to supplementary questions she said that she feared that her husband would be able to insist on her son living with him or indeed simply take him away and the courts would support him because he is a man. She was given an opportunity to expand on the suggestion that she would be forced into prostitution. To her credit she did not exaggerate the claim but said it is things that can follow when a person is abused.

61. The appellant was then cross-examined.

62. She did not accept that she had no idea of the whereabouts of her husband. She thought that he was in Tirana and referred to documents that tended to support that.

63. She did not accept that she had regular contact with her mother. She had some contact with her mother who was concerned about her grandson. They last spoke about a month before the hearing.

64. She insisted she had no contact with any friends or neighbours in Albania. They had gone away. In one case they had gone to Greece.

65. She had been employed work in Albania. She had worked for a few months at a hospital. It was her husband that stopped her getting a job because he hated her and would make it very difficult if he found out about her. She was asked to explain her fear and said that she could not point to anything that he could actually do. They were not divorced. She did not want to contact him and thought that that would be necessary to initiate proceedings. She was still frightened of him.

66. She was asked if she was aware of schemes run by United Nations to assist women who had been victims of domestic violence in Albania. She was aware of such schemes but was not aware that she qualified for any of them. She was not prepared to entertain the hypothetical question about complaining about her husband in the event of her return. She said she would be dead in the event of her return.

67. Mr Melvin drew attention to evidence from the Home Office suggesting she would be entitled to housing, schooling and protection of the authorities and some kind of benefit by way of income. She said she would not be entitled to anything in Albania and that that was because they did not give help in Albania. She insisted that any contact with her husband would provoke him to anger even though it had been a long time since there had been any kind of contact.

68. She said her brother cannot continue supporting her indefinitely in the event of a return to Albania. He had got a family to support in the United Kingdom.

69. The appellant's brother gave evidence before me.

70. The brother adopted his statements and gave evidence. Again I read the statements but only referred to the parts that I consider relevant to the point that I have to decide. He starts with the disadvantage of having to accept that he had previously claimed asylum on an entirely dishonest basis contending to be from Kosovo but he returned to Albania when that application was not successful. He is now married with three children but was separated from his wife. He was working for a roofing firm.

71. He said in that statement that "Albania is a strange country – they are set in their ways with culture and tradition, values and honour."

72. Although his sister (the appellant) had acted to save her life and her son's life she has now "dishonoured our family, especially my father."

73. The appellant would be seen as someone who had "brought shame and dishonour – this is the way that Albania operates".

74. Nevertheless, the concern expressed in that statement was for her safety because she would be identified and could not hide. He did not say then that she would be ostracised.

75. In his statement of 15 March 2017, he explained that he kept in contact with the appellant and seemed to be settled happily in the United Kingdom. He continued to give examples of spurned husbands being violent and even killing their former partners and being indulged by the police.

76. Nevertheless, he said that the first call on his resources was to his wife and their three children. He had also had an obligation to support his parents financially. He could not possibly afford to assist the appellant in the event of relocation to Tirana. His wife would not agree but in any event the money was just not there. He also produced a financial statement dated 22 October 2017 setting out his income and expenses. This was intended to support his contention that he could not afford long term support for the appellant.

77. He adopted these statements and was cross-examined.

78. He agreed that he had another brother in the United Kingdom but they had fallen out a long time ago. However, the brother did have some contact with the witness' children. He did not know why the brother was not supporting the appeal.

79. He insisted he did not have the funds for long term support.

80. He accepted that he now had his own business.

81. He last went to Albania a month before the hearing to see his parents particularly because his mother was unwell. He knew that the appellant spoke to their mother but he did not know how often. He saw his relatives in Albania typically in the summer every year.

82. He was not aware of his sister the appellant having any contact with anyone in Albania other than their mother.

83. He was not aware of any threats coming from the appellant's former husband directed to him but he was aware of threats made to his sister. He thought it was likely that there would be support from the relative in the police force the men would stick together to make things difficult for the appellant.

84. He was not re-examined.

85. The appellant's sister-in-law gave evidence. She said that although she had the greatest respect for the appellant she would "very strongly oppose my husband supporting her and her son financially should they be required to leave the UK". Essentially they needed the money for themselves.

86. She was not cross-examined and so the question of re-examination did not arise.

87. I then heard evidence from Antonia Young who gave expert evidence on conditions in Albania. Ms Young's qualifications appear to be a Bachelor of Arts degree from the University of California, a certificate in social work from the University of Edinburgh and to be working for a higher degree from the University of London. She was aware that her evidence had been criticised in another case and had taken to heart the criticisms given and had improved her methodology as a consequence.

88. Her main report is dated 21 March 2016. It is supplemented by a note dated 8 May 2016 and a second report dated 13 June 2017. Again, I read the entire reports but only

comment on that part which is relevant to the material before me. There are further notes dated 6 September 2017 and 27 October 2017 written in response to submissions from the Respondent. I have not dwelled on Ms Young's evidence that the appellant fears contact with her husband as I have upheld the finding that the appellant can look to the state for protection.

89. Ms Young does refer to "traditional law" remaining strong and the society being very patriarchal so that women found it difficult to assert their rights. She said at page 15 of her report:

> "I cannot overstate the enormity of the sense of shame that Albanian women fell about themselves once they have deviated from strict family traditions concerning sex and marriage. Not only does she blame herself, but the shame will be increased by knowing about the possible revenge which may be taken towards her family."

90. She continued, having referred to learned journals suggesting that women who were different in this way who had been trafficked were by reason of the trafficking stigmatised and developed low self-esteem. She said:

> "A woman who leaves her husband, or family home without very strong family support and without accounting for where she is going and for what reason, is perceived in Albanian society as a "stained" woman, not worthy of civil treatment from anyone."

91. Ms Young opined that such a woman would "be marked as an outsider" and also as a "woman without morals and, hence, worthless". She then referred to the reported article indicating how a "woman can be stigmatised just because she left the village, no matter for what reason, the mentality of the community simply assumes she was a prostitute".

92. Ms Young accepted a message sent to her by email. It said:

> "We know of only two friends in Albania who have not spurned DD. But in spite of that, they are unable, dues to pressures, to make any further mover to help her. Even her own mother is unable to help her. She is fortunate that her brother, having lived for a long time in the UK, has relaxed this need to follow Albanian traditional patriarchal behaviour".

93. Ms Young commented:

> "This view exactly reflects my own on the harsh situation that DD would face were she and her son returned to Albania".

94. Mr Melvin cross-examined and sought to lay the foundation for the respondent's case which is that the expert evidence was unreliable and/or biased.

95. Ms Young confirmed that she agreed it would be impossible to make a life as a single woman in Albania. She insisted that in a society that is honour based she had brought disgrace by rebelling against conventional values.

96. Nevertheless the witness accepted that there are "thousands" of divorces in Albania every year. She said that they were mainly in towns rather than in rural Albania. She was then asked if it were her position that divorced women in Tirana will be unable to make a life for themselves, the appellant replied:

> "Yes, in most but not all circumstances, some wealthy divorced women live near to supporting family network".

97. She said that it is very hard for any woman on her own in Albania including widows to establish herself. The position is different if a person is wealthy but the level of corruption in society makes it very difficult for anyone without support to even get a job.

98. Mr Melvin then drew attention to the report about a woman who was the victim of domestic violence who went into a shelter and who had now established herself working in a local hotel. Ms Young accepted that these things happened. She said she was familiar with the report but she regarded that illustration as exceptional rather than typical. The appellant was doubtful that as many as 45% of single women were employed. She could not explain statistics suggesting that that was the case.

99. Ms Young was aware of shelters in Albania in Tirana and indeed had visited a centre but did not regard them as safe. In particular they do not protect children from being kidnapped at school. She accepted that benefits will probably be available to her but said it would take a long time to arrange them. She did not accept that enough was being done to change the culture of the police although she accepted that something had been done. She did not believe an illustration put to her of a police officer being prosecuted for using improperly identification data found in the course of his work. She had no proper basis for disputing it but it was so contrary to her experience and expectations that she did not believe it.

100. Ms Young accepted that a woman who was the victim of domestic violence would be entitled to protection and will be entitled to some social benefits.

101. Miss Young was shown in the respondent's papers an apparently well researched story of a woman who had been the subject of domestic violence but who had established herself and started a new life. It was said that her children were "attending school in a nurturing environment" and the woman had a job as a housekeeper in a hotel. Miss Young did not accept that this was indicative of a change in societal attitudes. She said it was one example of somebody who had done well.

102. Ms Young was remined that her evidence was not accepted in the decision in **MF (Albania)**. She said that the evidence was given a long time ago and she tried to heed the reasons. She had forgotten that she had been criticised in another case.

103. It was also her view that the appellant's husband would be under societal pressure to assert himself and take revenge. She described it as a traditional response. Not everybody behaved like that. She was then re-examined.

104. That was the end of the oral evidence.

105. There is a medical report from Dr Chiedu Obuaya whose qualifications include his being a Member of the Royal College of Psychiatrists. The appellant is not seriously ill and this is not an appeal that should be allowed on "medical" grounds but Dr Obuaya noticed signs of the appellants concentration and energy levels being impaired. He expected a good long-term prognosis if the appellant was given support but not if she was isolated socially.

106. The file includes Amnesty International Reports on Albania dealing particularly with human rights and domestic violence dated April 2014. It is clear from the reports that the government is making serious efforts to bring about change but also clear that change is not complete. The Amnesty International Report refers for example to the recognition of domestic violence in criminal code in 2012 as "a major step forward, but much remains to be done to fully implement the Law on Islands in Family Relations to ensure the protection of the victims." This is not strictly relevant to the point before me but is illustrative of a government that is bringing about change but change is not yet effective in all aspects.

107. The Amnesty Report goes on to records that "Albania is a signatory to most of the major international and regional human rights treaties, but implementation often lags far behind ratification, as may be seen from the examples highlighted below." Examples are then given.

108. A report from the Immigration and Refugee Board of Canada dated 30 April 2014 deals particularly with domestic violence. It refers to the "domestic violence is deeply rooted in 'patriarchal traditions and customs,' such as 'strict gender identities and roles, patriarchal authority, adherence to an honour–and–shame" system.

109. The respondent particularly relied on a Country of Information and Guidance Albania – Women Fearing Domestic Violence version 1 April 2016 and a note from the British Embassy in Tirana dated 30 January 2017 and another dated 6 October 2017 as well as a Country of Information Note Albania (domestic violence) July 2017 and news reports from UN women. Mindful of the submissions made I work I have considered those reports.

110. The Country Information and Guidance on Albania purports to address itself to women in fear of persecution or serious harm due to domestic violence. This refers to a sufficiency of protection (which is not in issue here) and also says at 3.1.3 that "Internal relocation to avoid risk from domestic violence is likely to be possible, as long as it would not, on the particular facts of the case, be unduly harsh to expect the woman to do so."

111. The report of April 2016 under the heading "assistance available to women" refers to there being "some good practices in place to provide services to women and girls" who are victims of violence. There is a section on government run shelters which are inadequate and again not really dealing with the issue that I have to consider.

112. A document entitled "Albania: country guidance case on domestic violence July 2017" refers to a report by the Albanian Institute of Statistics and Public Health in 2010. This is the source of the information that women who are divorced, separated or widowed are most likely to be employed. It is suggested that 45% of such women are employed, married or cohabiting women about 35%. Nevertheless, the same document referring to a report from the Peoples Advocate of Albania says that "Women, particularly divorced women and single mothers, Roma women, women with disabilities, and other vulnerable women, face problems with their access to justice, inequality in the labour relations, and barriers in receiving the social and economic benefits to which they are entitled". It is the same report that refers to the

police acting "very fast" in a particular case and was the source of much of Mr Melvin's entirely appropriate questioning.

113. The embassy note dated 6 October 2017 deals with the possibility of tracing a person who regularly believes in police data. It is accepted that some not all police officers have access to a civil registration system and says how a victim could remain in a shelter until they were satisfied that the risk had passed.

114. The note dated 13 January 2017 purports to deal directly with the question that most interests me. It concerned whether a "Single woman, who has previously been the victim of domestic violence, would be able to live in Tirana with her 13 year old son, and how she can support herself and her son."

115. The Secretary of State's officers at the British Embassy had arranged a meeting with a senior official from the Albanian Ministry of Social Welfare and Youth, the director of the Albanian Social Services and two employment officers in Tirana. This report says that a person returning would have to register to obtain benefits and explained how registration would be organised.

116. There is a quotation from a speech of the then Prime Minister of the Republic of Albania Mr Edi Rana which refers to Albania making important legal commitments promoting the role of women in society and protecting them.

117. One of the reasons for delay in this case was anticipation of relevant country guidance and a decision was produced by this Tribunal now known as **BF (Tirana – gay men) Albania CG [2019] UKUT 00093 (IAC)**. I gave the parties the opportunity of making further submissions in the light of that decision. I declined to reopen the issues completely and admit fresh evidence. I simply wanted to consider if anything in that case bore on the submissions that had to be made and I think the short answer is no there is not.

118. Both parties made further submissions on 18 June 2019 and 12 July 2019 respectively. I have carefully considered them. I have, however, concluded that the fact the gay people generally can establish themselves in Tirana is not a strict comparator with victims of violence. Whilst gay people may attract social outrage they also have a support group, namely each other, that does not appear to exist in the case of victims of domestic violence.

119. This is the kind of case that possibly illustrates the difficulties that so often face tribunal judges at both levels in this jurisdiction. I am satisfied that I have been told the truth broadly by the witnesses. The appellant may have exaggerated some of the difficulties because she clearly wants to remain in the United Kingdom but she is not making up the fear that she has of isolation in Albania.

120. Her fear is enhanced by an unjustified believe that her husband will seek vengeance on her and that the state will not protect her but it does add to her concerns.

121. It is clear from background evidence that isolation and ostracization tends to happen. The degree and intensity of it is much harder to predict.

122. Domestic violence is common in Albania. Albania is making serious attempts to bring about a change in culture and has had significant successes. This decision is

not about whether or not a person who has been the victim of domestic violence will risk further domestic violence and persecution by the perpetrator. It is plain that the government of Albania is aware of its poor international reputation and that much of it is deserved. It is also plain that the government of Albania is trying very hard to change society. There are examples of good practice and it is clearly, the case as the Home Office have been able to show, that some people in the kind of circumstances indicated by this appellant have been able to make good.

123. I found Miss Young's evidence of limited value. She does not refer to a long list of peer reviewed publications and the tone of the report is indicative of someone who was favouring the applicant. As I have already indicated, I do not suggest that this was dishonest but I am concerned about her objectivity. Some of her evidence read more like advocacy than objectivity.

124. Nevertheless, I was impressed by the answer that she gave to the happy story of a woman who had established herself and said that she did not regard that as typical but regarded it as somebody who had been able to do it.

125. I also found it very significant that the Secretary of State's additional note from the embassy which looked from the title as though it was going to be very helpful dealt simply or primarily with access to a benefit. This is not the issue at all. I do not think it is anybody's case that this appellant will really be starving and destitute. The Appellant believed that the process is slower and harder than the government officials suggested but the appellant would clearly be entitled to some kind of benefit.

126. The relevant question is whether conditions in Tehran make it unreasonable or unduly harsh to expect this appellant to live there as a single woman with a teenage boy to look after.

127. I was impressed with the evidence that she would be perceived as somebody who had violated the values of society.

128. This must "knock on" to attitudes towards her son who must be a risk of being seen as "illegitimate" and, in this respect at least, his worries are the appellant's worries.

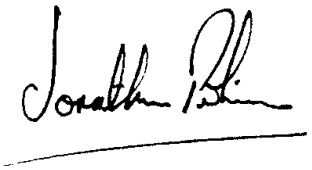
129. It is accepted she has a brother in the United Kingdom who may well be able to give some financial support but I accept his evidence and his wife's evidence that that money is needed for her family in the United Kingdom. This is not a case where there is considerable financial backing to help a woman establish herself although I anticipate something would be provided to help her settle because that is the kind of provision that family members give to each other.

130. There is no evidence to show that anyone in Albania would give the appellant any financial or social support. The evidence points in the opposite direction that she would indeed be on her own, which is why she left. She has no particular skills to offer. She is not somebody with a professional qualification or otherwise access to good employment. She will be on her own, she will be isolated, she will be ostracised, she is exactly the kind of person who is vulnerable to trafficking. I remind myself that I am not concerned with certainty or even probability but with whether there is a real risk. I am satisfied that, if the appellant were to be returned to

any part of Albania, she would (in the particular circumstances of her case) be at real risk of suffering treatment which would, cumulatively, be so serious as to amount to persecution for a refugee Convention reason.

Notice of Decision.

131. The First-tier Tribunal erred in law. I set aside its decision and I substitute a decision allowing the appeal on refugee grounds.



Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 11 November 2019