



IAC-FH-CK-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)    Appeal Number: UI-2021-000756  
RP/00018/2021**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On the 21<sup>st</sup> June 2022**

**Decision & Reasons Promulgated  
On the 18<sup>th</sup> July 2022**

**Before**

**UPPER TRIBUNAL JUDGE KEITH**

**Between**

**THE HON. MRS JUSTICE THORNTON  
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)  
UPPER TRIBUNAL JUDGE KEITH**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**'BN'  
(ANONYMITY DIRECTION MADE)**

Respondent

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the respondent is granted anonymity. No-one shall publish or reveal any information, including the name or address of the respondent, likely to lead members of the public to identify him. Failure to comply with this order could amount to a contempt of court. The reason is because of the appeal relates to a refugee claim.

**Representation:**

For the appellant: David Clarke, Senior Home Office Presenting Officer  
For the respondent: *Mr S Muquit*, instructed by Malik and Malik Solicitors

**DECISION AND REASONS**

## **Introduction**

1. These are the approved record of the decision and reasons which were given orally at the end of the hearing on 21<sup>st</sup> June 2022.
2. In order to avoid confusion, we refer to the appellant as the Secretary of State and the respondent as the Claimant, for the remainder of these reasons.
3. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Roots (the 'FtT'), promulgated on 17<sup>th</sup> September 2021, by which he dismissed the Claimant's appeal on refugee grounds but allowed the Claimant's appeal by reference to article 3 ECHR.
4. The context of the appeal was that the Claimant had previously been recognised as a refugee as a result of a decision of First-tier Tribunal Judge McMahon, promulgated on 28<sup>th</sup> June 2016. Judge McMahon had concluded that the Claimant had a well-founded fear of persecution in his country of origin, Albania, as a gay man and that there was not sufficiency of protection, nor was internal relocation from the town where he had lived, to the capital, Tirana, realistic. Crucially, Judge McMahon's decision was before the Country Guidance case of BF (Tirana - gay men) (CG) [2019] UKUT 93.
5. As a result of the Claimant's index offence of possession with intent to supply cocaine, the Secretary of State revoked his refugee status in her decision dated 20<sup>th</sup> May 2020; issued a deportation order on 30<sup>th</sup> December 2020; and refused his protection and human rights claim, in a decision of 4<sup>th</sup> January 2021.
6. The Secretary of State regarded the circumstances in Albania as having changed since the recognition of the Claimant's refugee status, as reflected in BF. She also concluded that he had been convicted of a particularly serious crime and constituted a danger to the community of the UK, for the purposes of section 72 of the Nationality, Immigration and Asylum Act 2002, such that his refugee claim fell to be refused. As internal relocation was available to the Claimant, she refused his article 3 ECHR claim.
7. The issues before the FtT were whether the Claimant had rebutted the presumption under section 72; and whether there had been a durable change in Albania, such that internal relocation would no longer be unduly harsh for the purposes of his refugee claim and his claim under article 3.

## **The FtT's decision**

8. At §§35 to 46 of his decision, the FtT concluded that the Claimant had not rebutted the presumption under section 72. As a consequence, the FtT did not go on to consider whether the decision to revoke the Claimant's refugee status on grounds of a durable change in Albania was correct. However, she went on to consider, at §§47 to 61, the Claimant's article 3 claim. Whilst at §48, the FtT referred to BF, the FtT also noted at §51 Judge McMahon's earlier decision, which had noted the lack of generalised

risks of persecution but had identified specifics to the Claimant. At §54, the FtT noted the Claimant's representative's assertion that the issue of relocation does not affect an article 3 assessment. At §60, the FtT concluded that he did not find that the Secretary of State had provided any evidence or submissions to persuade him to depart from Judge McMahon's 2016 decision on the risk to the Claimant in his home area.

### **The grounds of appeal and grant of permission**

9. While the Secretary of State had initially relied on the two grounds, she now only relies on one, namely that the FtT had not resolved the issue of whether internal relocation was relevant to article 3 ECHR and had failed to apply BF.
10. Upper Tribunal Judge Macleman granted permission on 18<sup>th</sup> February 2022. The grant of permission was not limited in its scope.

### **The hearing before us**

#### **The Secretary of State's submissions**

11. Mr Clarke reminded us of the 'headnotes' of BF. Headnote (ii) related to Tirana and gave general guidance and stated: *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.*"
12. Headnote (v) dealt with the general level of discrimination and in particular stated that even though there was general discrimination, it was not sufficiently serious to amount to persecution. Headnote (vi) gave general guidance that it would not be unduly harsh for an openly gay man to relocate to Tirana but in particular each case must be assessed on its own facts, taking into account an individual's personal circumstances.
13. The issue of durable change in relation to internal relocation to Tirana, since Judge McMahon's decision, was before the FtT and the FtT had not given adequate reasons for explaining why internal relocation would not be viable. In his reasons, the FtT had focussed on the risk in the Claimant's home town, (which had never been disputed) but not in relation to Tirana. Whilst Judge McMahon had focussed on the risk in the home town, that ought not to have been the FtT's focus, as it was not in dispute. The FtT had not analysed internal relocation to Tirana at all. The Claimant's circumstances had unarguably changed since Judge McMahon's decision. In 2016, he had been a minor, who would be returning without experience of work or family connections. In 2021, he was now an adult, with a work history, and both were relevant to whether he could support himself and find accommodation in Tirana.
14. The reader of the FtT's decision was left not knowing why the FtT had reached the conclusion he did in relation to internal relocation and article 3.

## **The Claimant's submissions**

15. In response, Mr Muquit referred us to his skeleton argument before the FtT, which was referred to at §47 of the decision. These included, at §§18(l) to (n) of the skeleton argument, Mr Muquit's submissions on internal relocation. These were that the Claimant would not have family support in Tirana or anywhere else and would be quickly identified as someone from his region in Albania and as gay. He would be the target of serious discrimination, find it difficult to get work, accommodation or to access medical care, police or judicial protection and would be subjected to violence because of this. Despite progress at institutional level, there would not be a sufficiency of protection even in Tirana, despite reported examples of tolerance and good practices on the part of agencies such as the police.
16. In summary, Mr Muquit invited us to consider that although the FtT's reasoning may, in his memorable phrase, be "pithy", nevertheless, when the FtT's reasoning was read in its context, in particular that there was no reason to depart from Judge McMahon's decision, that was sufficient explanation, as the FtT had accepted §§16 to 18 of Mr Muquit's skeleton argument.

## **Discussion and conclusions**

17. We remind ourselves of the risk, as identified by Volpi v Volpi [2022] EWCA Civ 464 as an appellate court, of "island-hopping" between particular aspects of evidence. We have not had an opportunity to consider all of the evidence in the same way as the FtT. We also remind ourselves that it is not for us to substitute our view for what we would have decided. The FtT can be assumed to have considered relevant evidence and submissions and did not need to refer to each aspect of evidence or the submissions.
18. On the one hand, we accept that Mr Muquit raised the issue of internal relocation with the FtT, as he set out at §§16 to 18 of his skeleton argument. We also accept that at §51 of his decision, the FtT had cited the passage of Mr Muquit's skeleton argument which drew a distinction between general risks, or the absence of risk, and the specific risks as they related to the Claimant.
19. However, on the other hand, we turn to the FtT's analysis in relation to article 3. He had referred at §54 to Mr Muquit submitting that "*relocation does not affect the article 3 consideration.*" We accept Mr Muquit's submission that he did not suggest to the FtT that relocation was immaterial to an article 3 analysis, rather that on the facts of this case, internal relocation would not mitigate the risk of persecution. However, even if the FtT understood Mr Muquit's submission to mean that (and it is far from clear), the flaw was how the FtT then explained his reasons in relation to internal relocation.
20. At §56, the FtT explained the burden of proof. At §57, he took the 2016 Tribunal decision as his starting point, referring to risk in the home area.

There is no issue with of those two paragraphs, except to say that the Secretary of State accepted risk in the Claimant's home area, as repeated at §59.

21. At §58, the FtT referred to the Secretary of State's case based on relocation to Tirana, following the country guidance case of BE. The remainder of the FtT's reasons in relation to article 3 are at §§60 to 61:

*"60. I do not find that the respondent has provided any evidence, or indeed arguments or submissions, to persuade me to depart from the findings of the 2016 Tribunal that the appellant would be at risk on return to his home area, as I have set out above in the summary of that decision. The respondent does not appear to dispute this."*

*61. For those reasons, and bearing in mind the low standard of proof, and taking into account the absolute nature of article 3, I find that removal to Albania would breach the appellant's article 3 rights. I therefore find that his appeal must be allowed on article 3 grounds."*

22. We accept Mr Clarke's submission the flaw is not that that the reasoning in relation to internal relocation was "pithy". Rather, there was no explanatory reasoning. §60 deals with a risk in the Claimant's home area, with which the FtT had already dealt at §§57 and 58. The FtT then moved straight to the conclusion at §61 that article 3 would not be breached. In contrast to the risk to the Claimant in his home area, the Secretary of State had clearly identified the guidance in BE as relevant to the Claimant, also noting the developments since Judge McMahon's decision in 2016 that the Claimant was no longer a minor in 2021 (with a date of birth in 1998) and on the basis of the sentencing remarks of the Judge who sentenced the Claimant to imprisonment for the index offence, the Claimant had some experience of work in the UK.
23. The FtT failed to explain why internal relocation to Tirana would not to mitigate the risk to the Claimant in 2021, or would be unduly harsh. The FtT raised the question, but did not answer it. The FtT's references were instead to risk in the Claimant's home area, which was not disputed.

### **Decision on error of law**

24. We conclude that there are material errors, and we must set the FtT's decision aside in respect of the Article 3 ECHR decision on relocation to Tirana. There was no appeal in respect of the section 72 certification and the protection appeal. We preserve the FtT's findings that the Claimant is a gay man, who is at Article 3 risk in his home area, but the issue remains of whether he is also at risk in Tirana.

### **Disposal**

25. With reference to paragraph 7.2 of the Senior President's Practice Statement and the necessary fact-finding, this is clearly a case that has to be remitted to the First-tier Tribunal for a complete rehearing. Both representatives were agreed on this course of action should we find there to be material errors of law.

26. The remittal shall involve a rehearing of the appeal in respect of article 3, subject to the preserved findings.

### **Notice of Decision**

**The decision of the First-tier Tribunal in relation to article 3 ECHR, in the event that the Claimant relocates to Tirana, contains material errors of law, and we set it aside.**

**We preserve the FtT's findings that the Claimant is a gay man and cannot be expected to relocate to his home town in Albania. We also preserve the finding that the Claimant has not rebutted the presumption under section 72 of the Nationality, Immigration and Asylum Act 2002. As a consequence, he remains excluded from protection under the Refugee Convention and for humanitarian protection.**

### **Directions to the First-tier Tribunal.**

**This appeal is remitted to the First-tier Tribunal for a rehearing of the Article 3 claim, with the preserved findings of fact set out above.**

**The remitted appeal shall not be heard by First-tier Tribunal Judge Roots.**

**The anonymity directions continue to apply.**

Signed **J. Keith**

Date: 29<sup>th</sup> June 2022

Upper Tribunal Judge Keith