IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/06582/2019**

THE IMMIGRATION ACTS

Heard at Field House via Microsoft Teams	**Decision & Reasons Promulgated**
On the 23rd November 2021	**On the 22nd December 2021**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

LK
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms K Tobin, Counsel instructed by Polpitiya & Co Solicitors
For the Respondent: Mr S Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge E M Field, (the judge), who dismissed the appellant's appeal against the Secretary of State's decision dated 1st July 2019 refusing his protection and human rights claim, and maintaining the decision to deport him from the United Kingdom dated 20th August 2018. The appellant asserted he had a well-founded fear of persecution or serious harm in Albania from a drug gang which trafficked him within the UK.

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2. The judge's decision recorded the appellant had been convicted of a drug crime and sentenced to eight months' imprisonment and that the Secretary of State deemed his deportation to be conducive to the public good under Section 3(5)(a) of the Immigration Act 1971. He had arrived in the United Kingdom clandestinely in March 2016, hoping to find employment. He had completed an undergraduate master's degree in Albania but could not find work. The appellant accepted work outside London but found that he was threatened by men who took his passport and telephone and forced him to work as a gardener cultivating cannabis. The police raided the house on 9th May 2018 and the appellant was arrested and served with a liability to deportation as an illegal entrant. He was referred to the National Referral Mechanism as a potential victim of trafficking and although a negative conclusive grounds decision was made on 24th July 2018 that was withdrawn. On 2nd August 2018 the appellant pleaded guilty and was convicted of being concerned with the production of a controlled drug class B; the plants had a street value of £77,700. The sentencing judge stated that he accepted that the appellant had been threatened but stated he could have gone to the police. The judge recorded at paragraph 16 that the appellant claimed that the men who had forced him to work told him that they had taken pictures of his passport and if the appellant did anything they had the names of the appellant's family and where they lived. It was not until 27th December 2018 that the appellant had been referred as a victim of modern-day slavery.

3. The judge referred to the decision of the respondent which noted that the appellant was unable to name the people he claimed he had worked for in the United Kingdom. He had given no credible reason why he would be killed if he was returned to Albania and further, the respondent relied on the Country Policy and Information Note on Albania, Background Information Note of July 2017 ("CPIN: Background") which confirmed there was a fully functioning police and judicial system in Albania and therefore there was sufficiency of protection.

4. It transpired at the hearing that the negative conclusive grounds decision had been withdrawn and there was no conclusive grounds decision.

5. The application for permission to appeal set out that the judge found the appellant's account to be credible and broadly consistent and that he was a victim of trafficking in the UK at the hands of a drugs gang. The judge accepted that shortly after his arrest and raid of the property his father was approached at his hometown, and it was submitted that the finding that his fear of return to Albania was not objectively well-founded was irrational in light of the positive findings made and not one supported by the evidence.

6. Having accepted the appellant was trafficked and forced to work in a cannabis farm which was raided during his watch, and which would have resulted in a "significant financial loss for the gang", it was irrational to conclude that the gang would have no ongoing interest in the appellant. It was correct that it was not the appellant who called the police. There was

nothing before the Tribunal to indicate that the gang would be aware of that.

7. It was submitted that the judge had accepted that the gang had an interest in the appellant beyond his arrest because of her findings at paragraph 76:

> *"The appellant said he was scared because these people had taken a picture of his passport and they were clear that 'they know who you are and can easily trace your family members'. I am satisfied that throughout the accounts, the appellant has been consistent that he was afraid because the men know how to find his family."*

At paragraph 83 the judge found:

> *"During the screening interview on 2nd November 2018, when asked to explain the reasons why he could not return to Albania, the appellant stated 'my father has some problems. Some people said to my father that when your son comes back from being in prison he will be killed.'"*

8. At 83 the judge found:

> *"However, later in the asylum interview, when asked why he feels that he is still important to these people, the appellant stated that*
>
> > *'these people told me before the police came that if the police are notified, you're dead … they said if you do anything we have information of your family, where they live, names. After I was taken into prison, after about one month they found my father's details and they met my father. They told him 'tell your son when he comes out of prison to come to Albania' (question 39).*
>
> *The appellant was therefore clear that his father had been approached and that this was connected to what had happened to him in Middlesbrough although in his account of this incident during the asylum interview he did not state that a clear threat had been made to his life."*

9. The judge found that the letter from the appellant's father stated that he was approached in May 2018 (paragraph 84).

10. In cross-examination the appellant stated that some people went to see his father in a coffee shop. He was told to tell his son they were after him and "he would be careful what he says. In case anything goes wrong we will be there" (paragraph 85).

11. Overall, the judge made a finding that she was persuaded to the lower standard that someone did approach Mr K and refer to the appellant shortly after the appellant was imprisoned and the judge was "satisfied that Mr K became concerned about his son following this incident especially when he could not reach him by telephone" (86).

12. Given this context, it was argued that the fact that the appellant had established he was involved in a gang and the fact that there was no ongoing risk was unfounded.

13. That the appellant was not located at his sister's or cousin's house in London was immaterial, but the concern was with the ease with which he might be located in Albania, and it was established that the gang were able to locate the appellant's father without difficulty whereas in London he could maintain anonymity. That his father had not been contacted again was immaterial because the appellant had not been returned to Albania. The appellant had not returned to Albania and there was no reason for them to have acted. This was evidence that the gang who had contacted the father had reason to retain an interest in the appellant.

14. The second ground of appeal was that the judge erred in finding there was sufficiency of protection following the CPIN. It was submitted that the prevalence of an Albanian drugs gang operating internationally as accepted by the judge at paragraph 93 indicated at the very least that there was a degree to which such gangs continued to operate with impunity. The appellant was not protected from acts of violence carried out against him by the gang in the UK and it would be very difficult to protect him in Albania.

15. The CPIN at 9.2.5 had identified the shortcomings of the protection and in the efficiency of the Albania police and the high levels of corruption.

16. A third ground asserted that there was a flawed assessment of the reasonableness of the internal relocation, submitting that there was no realistic or reasonable internal relocation, and the judge should have placed more weight on the evidence of Dr Korovilas and misconstrued his findings at paragraph 115. The doctor does not simply suggest that the appellant "would most likely be able to re-establish himself" in Tirana but goes on to state that it is equally the place where those he fears might most easily be able to trace him.

17. In her submissions at the hearing Ms Tobin relied substantially on her grounds for permission. I asked her about her grounds, particularly where she stated that there was a prevalence of Albanian "drugs gangs operating internationally" and "the A was not protected from acts of violence carried out against him by this gang here in the UK" and the implications this might have for any form of protection either in Albania or in the United Kingdom.

18. Ms Tobin accepted that there had been no further threats to the father, but this was because the appellant was not in Albania. The gang did not know that the appellant was not the person to have called the police and there remained a good chance the group would punish the appellant. Further, there was an interest in retrafficking him to recoup their losses. The incident was not old although she accepted that the appellant had been released from detention in 2019.

19. In reliance on the CPIN the judge did not consider the particular circumstances of this appellant and the position in which he finds himself. The gang operated successfully in the UK and Albania and operated with impunity. The expert report pointed to significant problems of organised crime and the CPIN confirmed that there was a lack of effective policing and prosecution in general terms and convictions of criminals was limited. The judge was persuaded there was no ongoing interest in the appellant but that was not accepted.

20. The appellant may still be on good terms with his family and would have support in relocating but the judge did not analyse whether an alternative of relocation really existed wherever he may go in Albania. She referred to **EH (blood feuds) Albania CG** [2012] UKUT 00348 (IAC)

21. and that the appellant may not be safe even in Tirana, considering the nature of the group and their potential reach. The evidence from Dr Korovilas was not considered properly and given adequate weight. The judge should have looked at corruption and ways in which someone might be traced because of the tight-knit nature of the community. There was no safe internal relocation option, and the assessment of reasonableness was flawed. The appellant had a subjective fear of reprisal, given that his family had been directly approached. The evidence before the court from the CPIN was the appellant was expected to register with the local government for employment and the appellant had further concerns with safety. It was not reasonable to expect a return.

22. She confirmed that the appellant was released from prison in January 2019.

23. At the hearing before me, Mr Clarke submitted that there were no material errors of law in the decision. The challenge centred on a rationality ground, and it was suggested that the circumstances and accepted findings of the trafficking and the approach to the father would determine the risk on return.

24. The appellant's representative was asking the court to ignore the fact that the father had not been contacted nor had the sister since the sentence. Mr Clarke pointed to paragraph 76 of the determination, which identified the previous clear threats to physically harm members of the family. The chronology was incorrect. The father had been approached prior to the appellant's trial and to suggest that the gang had an ongoing interest in the appellant was not evidenced. The father was approached in May 2018 and the record of the criminal court trial hearing was in June, July and August 2018. There was no credible ongoing interest *after* the appellant's conviction and to suggest otherwise was wrong. This undermined any suggestion that the gang would still be keeping their powder dry and not approach any family members until the appellant appeared in Albania. Mr Clarke also observed that there was no evidence of the influence of the gang in Albania.

25. The conclusions were properly open to a properly directed Tribunal. The case was mounted on the basis of a risk to the family members both here and in Albania. The judge made a series of findings and observations about the various accounts the appellant gave in his screening interview and accepted that the father was approached by the gang, but he was approached *before* the trial as could be seen from paragraphs 84 and 85. The father's letter was not penned, however, until 2019 and there was a serious limitation in the first-hand evidence of the father.

26. The stabbing of the appellant, which the judge found not connected to any risk or the gang, was the point when the father submitted the letter. The judge found at paragraphs 89 and 90 that the stabbing was indeed unrelated to the gang. There had been no further incidents of contact to anyone, neither the cousin nor the sister, at all and the contact with the father was one isolated incident. For three years the gang have been silent, and the judge was properly entitled to take that into account when assessing risk.

27. In relation to ground 2, the appellant did not even know who the gang were and did not identify them. He could not give names to the Crown Court, and it could not be argued that the judge was irrational for not concluding that the group had the required influence and reach for the authorities in Albania. It was unthinkable to suggest the gang in the UK would not have taken an interest in the trial. The judge went through the background evidence and noted the corruption in Albania and properly applied **Horvath v SSHD [2000} UKHL 37** .

28. Further, at paragraphs 109 and 110 the judge dealt with the expert evidence, but the base of the source material was questioned. Reliance on **BF (Tirana – gay men) Albania** CG [2019] UKUT 00093 (IAC) did not assist because it related to an entirely different social group.

29. The judge did refer to a more recent report and identified that the CPIN 2017 confirmed there was a functioning police force in Albania. There was a paucity of evidence and knowledge of the gang and there was no error of approach.

30. In terms of ground 3 it was submitted that the judge misconstrued the expert but against the context of no ongoing interest, paragraphs 114 and 115 were entirely open to the judge. The judge indeed noted that the expert relied on the opinion of two colleagues which was unsubstantiated. This was effectively hearsay evidence, and one would expect that these experts' identity and their qualifications were cited. It was open to the judge to attach a lesser weight to that report. There was a tension about what was argued in ground 1 and ground 3 such that the appellant could not live or contact the family when in fact he was in contact with the family and the cornerstone of the argument was the risk to the family.

31. In essence, Ms Tobin submitted that there were enough factors at play to give rise to an ongoing interest in the appellant from the drugs gang and

the fact he has maintained a degree of safety in the UK did not translate to safety in Albania.

Conclusions

32. The thrust of the challenge by Ms Tobin is that having accepted the appellant's account to be credible and broadly consistent, the judge erroneously goes on to find that the appellant's fear was not objectively well-founded and that such a finding was "irrational" in the light of the positive findings made and not one supported by the evidence before her, both subjective and objective.

33. As stated in **R (Iran) [2005] EWCA Civ 982** by Brooke LJ, "perversity" represents a very high hurdle. It was noted that the majority of the court in **Miftari v The Secretary of State for the Home Department [2005] EWCA Civ 481** agreed that it embraced decisions that were irrational or unreasonable in the **Wednesbury** sense (even if there was no wilful or conscious departure from the rational).

34. Since his conviction the judge found neither the appellant nor his family had been approached by the gang either in the United Kingdom nor in Albania despite clearly having been said to have their details.

35. At paragraph 93 the judge, after a series of findings, made the following findings.

"*Overall taking into account my findings, in the context of the Appellant's experiences in Middlesborough, I am satisfied that the has a subjective fear that he will be subject to reprisals from the gang for whom he was working. He believes that his life is in danger from this gang. Whilst I accept that the Appellant was subjected to threats and violence whilst he was in Middlesborough,[*my underlining] *I am not satisfied that there is a reasonable likelihood that his fears will be realised. I do not find that the danger which the Appellant perceives from these non-state agents is objectively well-founded. With regards to the objective evidence, I accept that there are Albanian criminal gangs which operate both inside and outside of Albania. I also accept that there are Albanian gangs involved in the drugs trade and that gangs operating within the UK may retain links and operations within Albania. However, as set out above, there is no indication that the gang continue to have any interest in the Appellant, the threats against him have not been renewed or repeated. I am therefore not satisfied that there is a future risk of harm to the Appellant from those who were responsible for the operation in Middlesborough".*

36. In relation to the account of the father being approached in Albania the judge made relevant findings at paragraphs 83 and 84. In essence, the appellant was asked during his asylum interview in November 2018 why he felt he was still important to the drugs gang, and he responded that they had told him before the police came that if the police were notified, he was dead and

> *"if you do anything we have information of your family, where they live, names. After I was taken into prison, after about one month they found my father's details and they met my father. They told him 'tell your son when he comes out of prison to come to Albania.'"*

37. As the judge identified at paragraph 83, no clear threat was made to the appellant's life via the father.

38. Again, at paragraph 84 the judge recorded that the appellant's father "does not record any explicit threat to harm the appellant." The judge at paragraph 86 accepted that the father had been approached but at paragraph 86 states the father "*does not go so far as to state that his son's life was threatened or that he fears for his son's life. Mr K does not state that he believes that it would be dangerous if his son returned to Albania".*

39. The judge also notes that there was no indication that the father had sought to contact the authorities in Albania or that he sought to inform the UK authorities what had happened, for example by providing a letter at an earlier stage. Indeed, "the incidents in May 2018 [i.e. the approach to the father] took on an increased significance for the appellant in light of the stabbing in May 2019", which the judge found was unconnected to the gangs at paragraphs 89 and 90. Specifically, the judge stated:

> *"I do not find it credible or reasonable that in the absence of any contact with the appellant in the United Kingdom following his arrest, imprisonment and release, the gang engineered that he rent the room in London with the purpose of finding an opportunity to physically attack him. … I find that if the perpetrator had been connected to the Middlesbrough gang he would have revealed this to the appellant"*

and "*there is no independent evidence, for example from the police or the Crown Court indicating that the perpetrator was connected with a criminal gang*". That finding was not challenged.

40. Crucially, at paragraph 91 the judge stated:

> *"91. I note that there is no indication that Mr K been contacted again by the men who approached him in May 2018 or indeed that he has been contacted by anyone else. There is no indication that other family members either in Albania or in the United Kingdom have been contacted and/or threatened. The Appellant lived with his cousin for a period following his release from immigration detention and there is no indication that he or his cousin were contacted by the men. Equally, there is no indication that his sister has been contacted or that the Appellant has been contacted by the men since he moved to live with his sister.*
>
> *92. I find therefore that the contact with Mr K in May 2018 was an isolated incident. I am satisfied that any interest which the gang*

had in the Appellant has ceased. I further note that the Appellant was unable to, and did not, provide any details to the police as to the identities of the men in Middlesborough. Whilst I accept that the destruction of the cannabis crop resulted in a significant financial loss for the gang in Middlesborough, it was not the Appellant who notified the police and indeed it was noted ruing the sentencing that the Appellant had not gone to the police. I do not therefore find it reasonable that the gang would conclude that the police raid was instigated by the Appellant and hold him responsible. The Appellant was simply a gardener, without any relevant information about the criminal operations of the gang. I do not therefore find it reasonable or credible in the circumstances that the gang would retain an interest in him after his conviction as claimed."

41. The judge had recorded at paragraph 76 that "*The Appellant did not refer to any threats against his family during his police interview. The defence statement states, "his family in London…were threatened, the men threatened to strangle his sister"*…"*they know who you are and can easily trace your family members"*. That assertion was not confined to Albania.

42. Although the appellant consistently stated he was afraid the judge concluded that there had been no further contact. Indeed, earlier in his evidence the appellant was recorded to have stated that the gang had taken "his passport and telephone although his passport was later returned to him", (see paragraph 5), and indeed, evidence was given that the appellant stayed with both his sister and cousin subsequent to his release from prison. It was therefore not surprising that the judge recorded that the appellant "said he was scared because these people had taken a picture of his passport and they were clear that 'they know who you are and can easily trace your family members'. This was a reference to the those in the UK and Albania. The judge went on to state at paragraph 76: "I am satisfied that throughout the accounts, the appellant has been consistent that he was afraid because the men know how to find his family".

43. It is against this context, that is that this gang operated in the UK, knew how to find the appellant in the UK, knew how to find his family members in the UK and indeed knew how to find his family in Albania and had taken no action whatsoever that the judge found the fear of persecution from a non-state agent was not objectively well founded. The finding that there was no continuing interest in the appellant was entirely open to the judge and cannot be argued as being irrational. As stated by Brooke LJ in **R (Iran)** at paragraph 12:

"12. We mention this because far too often practitioners use the word 'irrational' or 'perverse' when these epithets are completely inappropriate. If there is no chance that an appellate tribunal will categorise the matter of which they make complaint as irrational or perverse, they are simply wasting time – and, all too often, the taxpayer's resources – by suggesting that it was."

44. As Mr Clarke pointed out the approach to the father was in May 2018 and, even though there was no threat to the appellant's life, this was *prior* to the trial where in fact the appellant pleaded guilty and was convicted, and it is inconceivable that the gang were not aware of the trial and what was said during its currency. There was no indication that the appellant had indeed said anything about the gang. In his asylum interview he did not even know the name of the persons in the group nor the name of the group and could only name the person he met in the coffee shop by his first name and did not see him again.

45. The judge gave a fully reasoned decision for finding that the appellant would no longer be at risk from the Albanian criminal gangs which operate both, as she stated, "inside and outside of Albania". The judge concluded that gangs operated within the UK, may retain links and operations within Albania and that conclusion was entirely open to her.

46. Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge, **Shizad (sufficiency of reasons: set aside)** [2013] UKUT 00085 (IAC). In the context of the findings it was understandable and logical that the judge made positive findings on aspects of credibility but additionally, on the evidence as provided by the appellant concluded that there was no risk on return.

47. I turn to the suggestion that there was a flawed assessment of protection and reasonableness of internal relocation. Bearing in mind the judge had not found the appellant to be at risk on logical and sound reasoning, the grounds 2 and 3 fall away but nonetheless I will say something about them.

48. The judge at paragraph 113 properly directed herself in terms of sufficiency of protection, making reference to **Horvath**. The judge noted that "sufficiency of protection is measured by the availability of a system for the protection of the citizen and a willingness to operate that system". The judge specifically stated that, having regard to the country information, she was satisfied that there was an effective system in place in Albania. That means that the judge referred to all of the country information. It was entirely open to the judge to treat the report of Dr Korovilas with caution because the expert relied on a dated opinion from 2014 as to "police integrity and corruption by the Institute for Democracy". The judge was aware that when referring to the more recent CPIN that there was police abuse and corruption but nonetheless accepted that there was a functioning police and judicial system and that the civilian authorities generally maintain effective control over the police in Albania. The judge's reference to the sufficiency of protection was not confined to consideration of whether there was "a system in place which makes violent attacks by persecutors punishable".

49. As Mr Clarke pointed out, there was no evidence in relation to the gang having any influence with the police and a system of protection does not have to remove all risk.

50. As set out in **Horvath**,

> *"just as the substitute cannot achieve complete protection against isolated and random attacks, so also complete protection against such attacks is not to be expected of the home state. The standard to be applied is therefore not that which would eliminate all risk and would thus amount to a guarantee of protection in the home state. Rather it is a practical standard, which takes proper account of the duty which the state owes to all its own nationals. … we live in an imperfect world."*

51. The court in **Horvath** also went on to state that the sufficiency of protection was relevant to a consideration of whether each of the two tests - the fear test and the protection test - were satisfied. In this regard, the Tribunal did not accept that the appellant had a well-founded fear of serious violence or ill-treatment for a Convention reason and went on to find that the state was willing and able to afford protection.

52. I agree that reliance on **BF (Tirana – gay men) Albania** CG does not assist because it refers to a wholly different group. Additionally as recorded at paragraph 30 of the decision there was no Conclusive Grounds Decision on trafficking (which was said to have occurred in the United Kingdom not Albania) and both parties agreed to proceed without the said decision. The grounds did not specifically challenge the issue of retrafficking which the judge, nonetheless, addressed from paragraphs 100 onwards. In particular the judge at paragraph 108 found the appellant to be older (30 years) educated and with a supportive family and noted that he had some mental health difficulties but overall he was not at risk of re-trafficking as claimed. Those conclusions were sound.

53. With regards to the third ground and internal relocation, it was entirely open to the judge to approach the report of Dr Korovilas, (which she did consider) with caution because there was no indication of the expertise of his fellow colleagues on which the report relied.

54. It is clear that the judge took into account the background of the appellant, who is an educated young man in contact with his family, who have clearly been able to give him support throughout his engagement with the criminal and immigration services. There is no reason to suppose that he would no longer derive their support even if it was only emotional support such that it could assist him to relocate.

55. I do not accept that the decision of the First-tier Tribunal disclosed any material errors of law, and the judge gave sound, cogent and adequate reasons for her findings and the decision shall stand.

Notice of Decision

The appeal remains dismissed and the decision of the First-tier Tribunal shall stand.

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

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member 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.

Signed *Helen Rimington* Date 15th December 2021
Upper Tribunal Judge Rimington