Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/07032/2018 (V)**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5th January 2021	**On 18th January 2021**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

AG
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Bayati, of Counsel, instructed by Appleby Shaw
For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Albania born in February 1992. He arrived in the UK illegally in May 2015. On 30th March 2017 he was convicted of possession with intent to supply class A drugs and was given a three year' and six month sentence of imprisonment. A deportation order was signed against him as a result of this conviction, and in response he made an asylum and human rights

claim to remain in the UK, which in turn was refused in the respondent's decision of 21st May 2018. His appeal against that decision was dismissed on all grounds by First-tier Tribunal Judge Pooler in a determination promulgated on the 5th December 2019.

2. Permission to appeal was granted and I found that the First-tier Tribunal had erred in law, in a decision taken on the papers, in relation to the determination of the protection appeal, but not the Article 8 ECHR appeal based on the appellant's relationship with his wife and British citizen son, for the reasons set out in my decision on error of law which is attached to this decision as Annex A. I confirmed with the parties that neither of them had objections to the decision I took under Rule 34 finding an error of law in light of the decision in R (JCWI) v President of UTIAC [2020] EWHC 3103 (Admin). The matter comes before me now to remake the appeal.

3. I specifically preserved the following from the decision of the First-tier Tribunal:

- the concession from the appellant that an appeal was not pursued on asylum grounds at paragraph 4 of the decision
- the assessment that the appellant's partner is a credible witness at paragraph 10 of the decision
- the common ground summary of the appellant's criminal offending history at paragraph 12 of the decision
- the findings with respect to the medical evidence at paragraphs 33 to 38 of the decision, and the finding at paragraph 49 that the appellant's injuries make it likely that he was injured in an explosion in Tirana and possible that he received a gunshot injury.
- the findings with respect to the Panorama online report at paragraphs 40 to 42 of the decision
- the findings with respect to the appellant's partner's evidence about the explosion which damaged the appellant's car in October 2016 and the attempted burglary at paragraphs 43 and 44 of the decision
- the s.8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 findings at paragraph 48 of the decision
- the finding that no weight could be placed on the letters from the appellant's uncles at paragraph 50 of the decision.

4. The rest of the findings in the credibility section were set aside, particularly those at paragraphs 39, 46-47, 51, and those after the third sentence at paragraph 49 of the decision.

5. Ms Bayati confirmed to me that the protection appeal is argued only on the basis that the appellant's removal would be contrary to Article 3 ECHR. It was accepted before me, for the appellant, that his appeal could not succeed on humanitarian protection grounds for the same reason, namely the criminal conviction, it could not succeed under the 1951 Geneva Convention. It was agreed that whilst I had upheld the Article 8 ECHR findings of the First-tier

Tribunal different findings on the problems the appellant had in Albania might potentially affect his ability to reintegrate in that country and thus potentially amount to it being unduly harsh for his wife and child to have family life in that country, and that recent developments in the UK with respect to criminal attacks on his wife's family might potentially mean it was unduly harsh for them to remain in the UK. These points potentially affecting the Article 8 ECHR appeal could therefore also be argued before me.

6. The hearing was held at a remote Skype for Business hearing in light of the need to reduce the transmission of the Covid-19 virus, and in light of this being found to be acceptable by both parties, and being a means by which the appeal could be fairly and justly determined. There were no significant problems with audibility or connectivity, although it was necessary for us to wait for a participant or participants to reconnect to the hearing from time to time. I took care to recap where the hearing had got to prior to the inadvertent departure of a participant/participants, and to ensure that nothing had been missed by anyone. The appellant adduced new evidence which I admitted as Mr Tan raised no objections, despite some of it being produced only on the day of the hearing, and in light of the fact that it was potentially relevant to the determination of the appeal.

Evidence & Submissions – Remaking

7. The appellant's partner, AB, gave evidence in English. She confirmed her identity and address, and that the contents of her statements were true. In short summary her evidence, from her statements and oral evidence is as follows. She is the fiancée of the appellant. She met him in 2014 in Kosovo, and travelled with him to Albania in 2015 but did not in any way know about or help arrange his illegal trip to the UK, although it was her wish that he come to join her lawfully in the UK. They lived together after the appellant came to the UK illegally in May 2015. They have a son born in September 2016 who is a British citizen.

8. On 11th October 2016 her car exploded and was destroyed near her home. She reported the matter to the police the same day but at that time she did not know why it had happened at the time. She understood in a very general way that the appellant had some serious, potentially life threatening, problems relating to a debt in Albania from 2014 onwards but knew none of the detail of those problems until he told her about these in full in December 2016 (when he was in remanded in custody relating to the index offence). She thought the appellant had not told her the full details before then as when he had threatening calls in the UK she had been pregnant or had a new born baby, and so he had not wanted to stress her. When she was told the whole story in December 2016 she understood that those who had destroyed the car and said that they would harm her and her son next were doing this as a result of the debt her partner owed to gangsters in Albania. This is why subsequent reports to the police about further suspicious activity which indicated people were

trying to enter her flat include details of the appellant's problems in Albania as she was aware of them by that stage.

9. AB maintained her relationship with the appellant when he was in prison through visits and phone calls, and on his release from prison in August 2018 the appellant came to live with her and her family. This was as part of an extended household including her parents and brother. The appellant and their son have a very strong bond. The appellant cared for her son whilst she was studying for a law degree, and at points of time when she has worked. She wants to be allowed to remain in her country of nationality and not in Albania which is a foreign country to her, and feels that it is in the best interests of her son to stay here with better education and career options in the future, and surrounded by his extended family.

10. In February 2020 her brother, HB, was attacked by the Selrack gang on the Aldriche Way Estate and went to live with an uncle for safety reason; in March she took her brother back to get his belongings and there was an attempt to stab him and kidnap him by the same gang; a few days later in March 2020 she was in her car with the appellant and her brother and they were shot on the Aldriche Way Estate. Three suspects were arrested in relation to these attacks. They are of Albanian origin. They are people who she grew up with on the Aldriche Way Estate and has known since childhood, and one of them had been in Albania recently when he was arrested. They are now being charged with attempted murder, possession of firearms, public disorder and endangerment. They are remanded in custody and the trial will take place in February 2021. She is a prosecution witness, as is her mother, but her brother, HB, and the appellant are not, partly because they do not wish to be seen as "snitches" but also because her brother is traumatised by the attacks and the appellant is not seen as a necessary witness because he can only say the same things that she can.

11. These incidents have understandably made her very anxious. They have had to remove their son from his nursery on the Aldriche Estate; and they have been rehoused in London away from the area because the Metropolitan police believe they are in serious danger there. She does not believe that her brother, HB, had any gang involvement: he is training to be a plumber and has no issues with anyone. She speculates that the attacks might be something to do with the appellant's problems in Albania. The appellant is not mentioned in the police letter, which was written to assist with their rehousing, because he is not a witness and does not appear on the tenancy agreement. The appellant is however living with her, her parents and their son at the new temporary address.

12. AB also understands that the appellant's mother and sister have recently come to the UK and claimed asylum in Scotland, but she does not think that they have had their full asylum interviews as yet.

13. The appellant gave evidence through the Albanian interpreter and confirmed his identity and that his statements were true. He was able to remember only a few details of his current temporary address, but correctly identified whom he lived with and knew the door number.

14. The appellant's claim is in summary as follows. He says that he is at real risk of serious harm due to threat from a serious criminal gang led by two gangsters, NK and his right-hand man RZ, as a result of a debt of around 25,000 Euros which passed to him from his father on his father's death in 2007 in accordance with Albanian tradition or Kanun. He accepts that he has no evidence about the debt which was taken on for his father's cancer treatment, or of the medical treatment his father received in Belgium whilst living with an uncle, but has never been asked to provide this. There was a notebook which had details of the sums owed which he tried to get sent to him from Albania, but he failed in these attempts. His father did not die in 2012 as is recorded in the probation service interview in 2017, this must have been a misunderstanding.

15. The appellant asserts that he is at real risk of serious harm because of a history of violent attacks and threats both in Albania and in the UK. The appellant claims the threats to kill started in 2009, and that they started at this point as previously he was not an adult. In response he moved, within days, firstly to Italy where he stayed for several months, then through France and to Belgium where he stayed for about 9 months before being removed back to Albania by the Belgians in 2011, and going to live in Tirana. He had support from an uncle who had connections with the chief of police at that time, who found him employment. He says that there was a bomb explosion in his flat in Tirana in October 2011 which he believes was planted by RZ (and which was reported in the Albanian newspaper, Panorama), and that the gang planted drugs in an unsuccessful attempt to incriminate him. He claims he was then shot in the leg whilst driving in Tirana by RZ in November 2011. After five months in an uncle's house (that uncle's wife was a senior nurse) recovering from the shooting he then flew, in 2012, to Amsterdam, but was denied entry but negotiated removal to Kosovo, rather than Albania, where he stayed from 2012 to 2015.

16. The appellant then travelled to the UK illegally with the assistance of his uncle in 2015 by first returning to Albania to get a passport, and then travelling to the UK via France and Italy. He has cohabited with his partner ever since bar time in prison. His partner's car was damaged in an explosion in the UK in October 2016 in an attack he maintains was carried out by an associate of NK after he had been told he needed to pay off his debt to the gangster in a phone call. This UK attack was, the appellant claims, followed by a threat of serious harm to his wife and child if he did not carry a package on behalf of the gangster. As a result he agreed to do this, and this, in turn, led to his criminal conviction.

17. The appellant explained that his partner knew in some general way that he had problems and had to leave Albania, but not the detail until the first or

second visit to him in prison after his arrest on drugs charges in 2016. He did not tell her the details because she is female, and grew up in a European country and would not have understood that he could not simply leave Albania using legal visa processes. He did not tell her about the threats prior to her car being blown up because they had a new-born baby and he did not want to put her under stress. He could not move his family away from their address as he had no right to work. He believes that he had two or three phone calls prior to the car being blow up in 2016, although he had said numerous in a statement submitted with representations against the signing of the deportation order and just one call in his asylum interview. His asylum interview was conducted without an interpreter in prison, and he thought he had misunderstood that the question was how many calls on the day before the explosion. He had been asked by his solicitors if the interview was correct and he believed that it was. He was certain that it was the gang members who blew up the car as a few hours later he got their package (of drugs) and decided that he had to follow their instructions to deliver it. He was not present when his wife reported the explosion of the car to the police in October 2016, and she was unaware of the threats connecting this with his debt at that time so would not have mentioned them in her report.

18. The appellant regrets the decision to commit this crime due to these threats, and particularly because it separated him from his partner and son with whom he has a very close relationship for the period of his imprisonment.

19. The appellant believes that he remains at risk of serious harm in Albania, and that the recent attacks on his wife's family may be connected to his problems as one of the men accused had recently been in Albania. He does not know the Selrack gang on the Aldriche estate beyond recognising them by sight and saying hello, and has no reason to believe that they are connected to the gang which is threatening him regarding the debt bar the fact that one of them had recently been in Albania and the fact that his partner's brother had previously had no problems so there appears to be no other explanation. He is willing to be a witness if the police need him, and has informed them of this fact, but he would prefer not to be one because as a man as he does not want to be seen as a "snitch" and in any case he cannot say anything as a witness more than his partner. The police have confirmed that they do not need him as a witness at present.

20. The appellant believes that the Albanian police will not protect him and cannot do so, as they are corrupt and inefficient, and incapable of doing so as the gang had connections with the government and police in Albania. As the gang has found him and made threats to kill in London, and destroyed his partner's car, he does not believe he could find safety by internal relocation in Albania either. He has an on-going very close relationship with his son, and wants him to grow up in the country of his nationality, with all the benefits that will bring, and believes that it would be unduly harsh for him to have to move to Albania or for his son to remain in the UK without him.

21. Mr Tan argues for the respondent that the appeal should be dismissed. Reliance was placed on the relevant parts of the reasons for refusal letter dated 21st May 2018 and oral submissions. It is argued that the appellant's removal is not prohibited by Article 3 of the European Convention on Human Rights.

22. It is argued that the appellant's protection claim is not credible because he was not consistent as to the amount owed to the gangsters, whether it was 20,000 Euros or 25,000 Euros, or whether his mother knew of the debt. It is also not considered credible that the money was owing as the history provided by the appellant is that the gangster, NK, did not try to get the money back from him for two years, between 2007 (when his father died) and 2009 when he was living in the same area of Tropoje. Further there is no evidence of any threats/attacks on his mother or other adult male family members, which would be expected if this is a family debt, either in this earlier period or whilst the appellant was abroad for various period of time from 2011 to now. There was also an inconsistency about the date of his father's death in the probation report of 2017, which records it as 2012.

23. It is also said to be inconsistent with his being afraid for his life that the appellant returned and worked in Tirana in 2011, after he was deported from Belgium, if he was receiving threats from NK. It is argued to be speculative that the explosion at his home in 2011 was caused by the gangsters. It is argued not to be credible that the appellant would have gone back to Tirana to get a passport in 2015 given the threats to kill him in that city. It is not considered consistent that the gangsters would allow the appellant to pay off his debt in the UK by couriering drugs for them if previously, in 2009 and 2011, they had threatened and attempted to kill him. It is also argued that it is not believable that he was coerced into couriering drugs by the gangsters because he did not tell the police this at the earliest possible opportunity or run duress as a defence.

24. It is argued that the appellant has been inconsistent about the number of calls he received from the gang prior to the destruction of his partner's car in 2016: it was numerous in his first statement; one in his asylum interview and two or three today in oral evidence, and there had been no attempt to rectify the erroneous statement in the asylum interview. It is argued that it is not credible that the appellant did not tell his partner about his detailed history of problems until he was in prison at the end of 2016; and thus that the information was not included about the gang in her first police report about her car being blow up in 2016. The connection with the recent problems for his partner's family is accepted for the appellant as being speculative, and there is no explanation as to why his partner's brother would be the main target of this violence if the cause was the appellant's debt. We know nothing about the reasons behind the appellant's mother and sister coming to the UK and making an asylum claim, so this adds nothing to the appellant's claim.

25. It is argued that in any case there is sufficiency of protection in Albania because the appellant's own case is that the main gangster who poses a threat

to him, RZ, is now in prison and NK is dead. It was not considered correct that if the appellant told the police of his problems with the gangsters that this would bring problems to him and his family, or reasonable that he decided not to seek protection from the authorities as he did not believe it would assist in any way. It is considered that there is a functioning police force in Albania, although country of origin sources cited indicate that there are serious problems with inadequacy and corruption in policing in Albania, there are mechanisms by which problems can be addressed or complained about. It should be concluded that the appellant had failed to take reasonable steps to prevent his persecution by using the Albanian legal system.

26. It is also argued that the appellant could have relocated internally within Albania away from NK and his associates as his problems were in Tirana he could have gone to the town of Vlore, for instance, which is some 153km south of Tirana. It is argued that the appellant could live there and would be unknown to anyone, and has shown an ability to obtain employment given his track record of obtaining jobs.

27. The expert report of Dr James Korovilas is argued to be one on which only little weight can be placed. This is because he starts from the proposition that there is truly a family debt when there are in fact many reasons to disbelieve this is correct. Further the gangster NK is now dead and RZ is serving a long prison sentence, and there is no hard evidence that the gang remains operative. It is speculative that this criminal network remains. Further when considering sufficiency of protection and internal flight there is a failure to consider that the appellant has an uncle who used to work for the police.

28. As there is no real risk of serious harm engaging Article 3 ECHR, the Article 8 ECHR conclusions of Judge of the First-tier Tribunal Pooler should stand. There is no supporting evidence beyond that of the two witnesses regarding the impact on the family of the current criminal proceedings which could lead to a conclusion that the appellant's deportation was now unduly harsh particularly as AB and her child could remain in the UK, and as they continue to live with the appellant's partner's parents they could assist AB with the child. The appeal should be dismissed.

29. Ms Bayati relied upon her skeleton argument and made further oral submissions. In summary she says the following on behalf of the appellant. Firstly, it is argued, that there is substantial evidence accepted and preserved from the First-tier Tribunal that the appellant and his partner has been the subject of the contended attacks, and of the appellant having scars consistent with the attacks and some symptoms of PTSD.

30. The complete evidence now also includes the court documents relating to the explosion at the appellant's flat in Tirana in October 2011 which confirm that drugs were found but the appellant was cleared of charges relating to these. The evidence of the expert, Dr Korovilas and Wikipedia confirms the existence of NK and his gang. Dr Korovilas' opinion is that the claim the appellant

makes is plausible: the Kanun could make the debt one which the appellant would inherit from his father and he could be violently targeted and exploited by the gang who had loaned his father money in Albania and the UK. It is plausible that the gang continues to exist after NK died and RZ was imprisoned because it was "too large and too integrated into the Albanian establishment for it to just disappear upon the death of a significant member". There is evidence in the statement of the appellant's criminal solicitor advocate, the pre-sentence report and the OASYS report that the appellant did raise a defence of duress initially, but it is clear that he was advised by his criminal lawyers that he had insufficient evidence for it to be likely to succeed and so eventually decided that the risk of this failing was too great given the lesser sentence he would receive if he entered a guilty plea.

31. The fact that there is no evidence of the debt or the appellant's father's medical treatment is of no significance as such evidence has never been an issue in the case, and there would not likely be such evidence after such a long period of time. With respect to the discrepancies about the number of calls prior to the destruction of his partner's car the asylum interview was conducted in English and it could have been a misunderstanding as claimed by the appellant. The expert report of Dr Korovilas should be given weight as it was clear that the oldest male child would be the responsible person for such a debt, and the expert has properly concluded that the claim is plausible with reference to significant country of origin materials without going into matters of credibility which are the prerogative of the Tribunal. It made sense that the appellant was not approached until he was an adult, and thus in 2009. The appellant's claim was not incredible because of his return to Tirana, as at that point he had the help of his uncle in the police. The expert was aware of the appellant having this uncle and clearly considered all of the evidence when writing his report as this is summarised at the start of the report. It was also psychologically plausible that the appellant would not have told his partner, AB, who had a very young baby, about the threats in the autumn of 2016, and that historically he had not wanted to burden her with the details of his problems, and that he would have felt himself compelled to comply with the gangs demands to transport the drugs to attempt to rid himself of the problem of the debt. The police reports are consistent with the history of AB not knowing the details of the appellant's troubles with the gang until after the appellant's remand in custody. The documents also support his contention that he initially raised duress by the gang in relation to his criminal offence.

32. Ms Bayati accepts that there is currently only speculation that the 2020 incidents targeting primarily the appellant's partner's brother are linked to the appellant's problems with the debt in Albania, and we know nothing of the detail of the claims made by the appellant's sister and mother in Scotland.

33. Ms Bayati argues that there is no sufficiency of protection in Albania, or internal flight alternative for the appellant because the gang he fears is linked with the Albanian establishment, and in light of the level of corruption in the Albanian police and their lack of willingness to take on powerful and

dangerous criminal gangs. The appellant's uncle is no longer with the police and so cannot use his position to assist him. The appellant would be required to register if he returned to Albania for work and other reasons, and so would not be able to live without his whereabouts becoming known.

34. It is argued for the appellant that whilst the First-tier Tribunal's decision on the Article 8 ECHR appeal was found not to err in law if this Tribunal were to find that there was some risk of serious harm, even if this was not a real risk, and that the appellant faced threats in Albania it ought to be found that it would be unduly harsh for the appellant's partner and British citizen child to accompany him to Albania, particularly given the harsh economic circumstances in Albania and the fact that the appellant's family (mother and sister) are no longer in that country to assist them settle there. It is also argued that it would be unduly harsh for the appellant's partner and child to remain in the UK without him particularly in light of the recent traumatic threats made to them in the UK and her role as a key prosecution witness in an attempted murder trial. Further even if it were not found to be unduly harsh it is argued that there are very compelling circumstances over and above the exceptions given the low risk of recidivism and the background of duress which led to the crime being committed, and all of the other circumstances of this case.

Conclusions – Remaking

35. This remaking is primarily an article 3 ECHR human rights appeal against the deportation of the appellant under s.32(5) of the UK Borders Act 2007. I have preserved from the First-tier Tribunal decision that the refugee appeal is conceded by the appellant, and today Ms Bayati, for the appellant, has agreed that he does not pursue the humanitarian protection appeal. The appellant was convicted of possession of cocaine with intent to supply and was sentenced to three years and six months imprisonment on 30th March 2017. He was previously of good character and pleaded guilty to the offence after the pre-trial hearing.

36. In determining the Article 3 ECHR appeal I put no weight at all on the 2020 events which have led to the attempted murder trial relating to the Aldriche Way Estate gang in which the appellant's partner, AB, is a prosecution witness as the appellant, whilst rightly providing this information for completeness, accepts that any connection to his problems is speculative. Likewise, I place no weight on the fact that the appellant's mother and sister have apparently recently claimed asylum in Scotland, as no details of the basis of their claims have been provided.

37. I will firstly decide whether the appellant presents a credible claim to have experienced the history of attacks on himself and his partner that he has claimed, and secondly examine if these attacks are for the reasons he has claimed. In this process no weight is to be given to the letters from the appellant's uncles, as this is a finding I have preserved from the First-tier Tribunal. I have also preserved that the following matters arising under s.8 8 of

the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 negatively affect his credibility: that he failed to claim asylum in Italy, France and Belgium and failed to claim asylum until two years after his arrival in the UK, and thus after his imprisonment, despite the fact that this was suggested by his partner who had experience working in a law firm and a law degree. This does not mean, however, that when everything is considered in the round he may not be found to be a credible witness in whole or in part.

38. As noted in the introduction I have preserved from the First-tier Tribunal the fact that the appellant's partner, AB, is found to be a generally credible witness and medical evidence from her GP shows that she suffers from depression and anxiety. It is also accepted that the appellant has suffered from a severe depressive episode and anxiety, and has trauma related symptoms, based on the medical report of Dr Sinha, who also recorded scars which were highly consistent with him being struck by shrapnel in October 2011 and a scar consistent with being caused by a gunshot wound in November 2011. The Panorama Online article dated 22nd October 2011 is consistent with the history of an explosion at the appellant's flat in October 2011 and mentions a link to a drugs gang dispute but does not mention NK by name. It is accepted as likely that the appellant was injured in 2011 in an explosion in Tirana, and possible that he received a gunshot wound in 2011 too It is accepted that appellant's car was damaged in the UK in an explosion in October 2016 because of the credibility of AB's evidence on this matter.

39. I find there is the following additional material evidence which supports the contention that the appellant has been exposed to Albanian gang threats/intimidation in the UK:

- The witness statement of his partner (who is found to be a credible witness) at D10 of the respondent's bundle includes information about the police installing a panic button and an intruder alarm in their home due to intimidation, this is also repeated at H 20 in the appellant's Pre-sentence Report and at H10 in the OASys Report, and at pages 191 -199 in the crime reports to the police made by the appellant's partner about her windscreen being smashed and tampering with her door in March 2017. Although it is also the case that the initial report regarding that the appellant's partner makes to the police regarding her car exploding in October 2016 does not attribute this to Albanian gangs trying to attack her partner

- From the Sentencing Remarks at B2-3 of the respondent's bundle, the pre-sentence report at H20 of the respondent's bundle and from the statement of Mr R Shah, his solicitor advocate in his criminal proceedings it is clear that at the outset of the criminal proceedings that the appellant had intended to run a defence of duress which was subsequently abandoned, as he was advised he did not have sufficient evidence to support it. This defence related to the appellant's claim that he was pressurised into acting as a drugs courier to pay of his father's

debt by Albanian organised criminals. At H21 of the respondent's bundle, in the risk assessment section of the pre-sentence report, it is concluded that although the current risk of serious harm is low: "there appears to be ongoing risk of harm to him and his family from criminal associates." The OASys Report at H10 of the respondent's bundle also includes the conclusion under analysis of offences that his criminal behaviour was either "for financial gain or as he claims under duress to repay his father's debts", and if his version is correct concludes: "he and his partner and son are at risk"

40. Mr Tan has questioned whether if the cause of the incidents was a dangerous criminal gang the appellant would have returned to Tirana after his expulsion from Belgium in 2011, having left that city due to threats of death if the debt were not paid back, and whether he would have gone back to Tirana from Kosovo to get a passport in 2015 before travelling to the UK. The appellant says that he only went to Tirana in 2011 after his uncle, with connections with the police had found him work with him as a driver and accommodation. I find that this is a satisfactory explanation: at this stage nothing had happened beyond threats and it is reasonable to think working so close with his uncle he would be safe, and that this was the best option after attempts to settle abroad had failed. The appellant says he returned to Tirana for a few days 2015 because he needed to do this to obtain a passport and was only there for a short time. I find that this is not inconsistent with the appellant's history to be at risk from the gang.

41. Mr Tan has argued that it is not credible that the appellant would not tell his partner the full detailed history about his past, particularly at the point when threats were made in London prior to exploding her car in October 2016. I accept however the consistent evidence of the appellant and his partner that she had not been told the full detailed story of the appellant's problems with the gang in Albania or about a threatening phone call that proceeded the attack until December 2016 when he was remanded having been caught transporting drugs. The failure to provide his partner with the full history until he was in prison is consistent with the appellant's rather chauvinistic view of the world in which women are not generally, and until absolutely necessary, told about male conflicts and troubles which are to be resolved by them and amongst them, and with his partner's evidence that she is a private person who would not have expected or perhaps even wanted a full explanation of his past troubles.

42. On the basis of this evidence I find to the lower civil standard of proof that the events took place: the appellant was attacked in the way in claims in 2011 and his partner was subjected to the violent and intimidating attacks in 2016.

43. Mr Tan has argued that the appellant has not shown that these attacks were by the criminal gang headed up by NK and RZ. I have no trouble finding that this group exists. I find that the Wikipedia gangster article about NK is sourced and thus is supportive evidence for this fact, and the expert, Dr Korovilas,

confirms that they are a powerful and prolific well-connected criminal network which operates both in UK and Albania. Whilst Mr Tan suggested I should not give weight to the report as ultimately supporting the appellant's claim to be at risk he did not suggest that Dr Korovilas was not a suitable expert on Albania, nor did he suggest that the report was not written to proper standards. I find that he is an appropriate expert on Albania country conditions and that the report contains a statement of truth that Dr Korovilas understands his duty to the court and that his opinion is objective and unbiased. I also accept that the appellant's partner is giving truthful evidence that she believes that the incidents with her car and the tampering with her door were related to the gang, and note that the police were sufficiently concerned to take measures to assist her on this basis. Of course, her information comes only from the appellant.

44. Mr Tan argues that there is insufficient evidence that the appellant owes money through an inherited debt from his father to the criminal gang: he points to the fact that there is no evidence of the medical treatment his father was said to have received using the money; that there was some variation in the exact amount owed and in one probation report the date of death for the appellant's father appears as 2012; he notes that there is no claim other family members were threatened for the money even when the appellant spent periods of years abroad; and that there was a delay in commencing the threats to the appellant between the supposed date of death of the appellant's father in 2007 and 2009; he suggests also that the modus operandi of the gang is inconsistent, sometimes wanting the appellant simply dead for failing to pay and sometimes wanting him to work for them to pay it off.

45. I note that Dr Korovilas finds it entirely plausible that the appellant could have preyed upon by this criminal gang for a debt owed by his father prior to his death, and that particularly, at paragraph 21 of his report (page 142 of the bundle) that a debt owed by a father would be seen as that owed by his son once he became an adult. I therefore do not find it implausible that the gang have gone after the appellant rather than other family members, or that they waited until 2009 to do so. I do not find that the inconsistent date of death in the probation document is anything more than an error of understanding by the writer due to the consistency in this date in all of the other accounts. I find that a criminal gang might veer opportunistically between dangerous acts intended to intimidate a person into paying up somehow, but which are reckless as to whether the death of that individual results but would no doubt reinforce their ruthlessness and the need for compliance with their demands to others, and forcing a person into working for them in drug smuggling and thus obtained a benefit from their indebtedness: there is nothing implausible about this. I accept that the appellant might not have known the precise amount his father borrowed for his treatment (and in response to question 39 in his full asylum interview he is careful to say the amount is "about 25,000 Euros) and note that he was only 13 or 14 years old at the time the transaction is said to have taken place. I find it plausible that the appellant had not understood a medical receipt from Belgium for treatment 15 years ago might

be helpful to verify his claim, particularly as he never visited his father in Belgium when he was being treated and given he died in that country, with his body being returned to Albania for burial, so would not have known the name of the hospital (as indeed he confirmed in his asylum interview) and other details. From a legal perspective evidence of the existence of the treatment would not of course prove the existence of the debt. I have considered the description of the appellant's father ill-health, treatment and death given at interview and find it commensurate with what it might be expected a child of the appellant's age would have known.

46. I now consider the general credibility of the appellant: I consider the s.8 matters which negatively affect this credibility and his criminal conviction for class A drugs which means that he is not a person of good character. The appellant, perhaps for cultural reasons, has also given evidence which reflects his having a rather low regard for the law as an effective process of dispute resolution, seemingly regarding it as a western European and, curiously, a female preserve, which he would rather not engage with unless absolutely necessary: preferring not to claim asylum until it was the only option; preferring to commit a crime for the gang that threatened him rather than put the matter of seeking protection from the threats into the hands of the British police; and preferring not to be a witness when his partner's brother was the victim of an attempted murder, in part at least, as he might be seen as a "snitch" even though the accused are not his personal friends. Ultimately, I am however satisfied to the lower civil standard of proof that what I have been told is true as it is consistent with the country of origin evidence, with his specific documentary evidence and with the credible evidence of his partner AB. Thus, when I consider everything in the round, I find that I am satisfied to the lower civil standard of proof that the appellant's father died as claimed having borrowed money for his cancer treatment from the criminal gang. I also accept that the appellant has shown that as a result of this debt the appellant and his partner were targeted by this gang in the ways that he has described.

47. Mr Tan argues that even if the events took place that the appellant could return to Albania as the appellant has failed to show that the gang remains an active entity following the death of NK and imprisonment of RZ; and further there is sufficiency of protection and the possibly of finding safety by internal relocation.

48. I am satisfied to the lower civil standard of proof that the gang continues to be able to pose a real risk of serious harm to the appellant. As the expert, Dr Korovilas, has pointed out documentary evidence of gangs is hard to come by, but his anecdotal information based on his being a senior lecturer at UWE Bristol, who since 1996 has specialised in studying Albania and Kosovo, and who was last in Albania on a research trip in March 2020, is that the gang continues despite the death of NK and imprisonment of RZ. In addition, Dr Korovilas' view is that "the gang to which they belonged was too large and too integrated into the Albanian establishment for it to just disappear upon the

death of one significant member." There is no country of origin information which suggests that this is not true.

49. I find that given that I have accepted that the criminal gang have targeted the appellant in the UK in 2016 that there is no possibility of internal relocation to a place of greater safety within Albania. My conclusions are informed by material in Dr Korovilas' report at paragraph 38 to 46. Factors in my reaching this conclusion are: that Albania is a small country; the appellant has been threatened in his home area of Tropoje in northern Albania and attacked in the capital Tirana; the gang who poses the threat has significant connections with the Albanian establishment giving them countrywide reach; there are cultural issues making identification of family and area of origin necessary for obtaining work and accommodation; and there is a formal legal requirement to register at any new address which is needed to obtain state services, and there is access to this registration data by criminals should they so wish due to problems of corruption.

50. This leaves the issue of sufficiency of protection. Sufficiency of state protection means a willingness and ability on the part of the receiving state to provide through its legal system a reasonable level of protection from ill-treatment. The effectiveness of the system provided is to be judged normally by its systemic ability to deter and/or to prevent the form of persecution of which there is a risk, not just punishment of it after the event. Notwithstanding systemic sufficiency of state protection in the receiving state, a claimant may still have a well-founded fear of persecution if she can show that its authorities know or ought to know of circumstances particular to her case giving rise to her fear, but are unlikely to provide the additional protection her particular circumstances reasonably require.

51. I have regard for the fact that the gang which the appellant fears is one with extensive contacts with the establishment, NK had a friendship with former leader of the Albanian Socialist party Fatos Nano formed in prison, and kept this friendship and "business connections" until he died (as set out in the report of Dr Korovilas at page 144 of the bundle). The Socialist Party remains in government in Albania. Dr Korovilas also cites, at paragraphs 32 -33 of his report, the latest US State Department Report on human rights in Albania as supportive of the position that the Albanian police are unwilling to take action or provide protection against threats made by powerful and dangerous criminal gangs and are poorly trained, unprofessional and corrupt. In the view of Dr Korovilas the ombudsman complaints system, which can be of assistance in some contexts, cannot be seen as providing sufficiency of protection as it would not provide a remedy at a point in time when the appellant was in imminent risk of being attacked or was being intimidated by a criminal gang. It is notable also that, as cited in the reasons for refusal letter, the European Commission 2016 report on Albania records that with respect to organized crime that the police and prosecution failed to identify criminal gangs behind drug cultivation and trafficking, and there is seldom efficient judicial follow up in criminal proceedings. Mr Tan has argued that the appellant can turn to

his uncle for protection as he has connections with the police. The appellant says that his uncle no longer holds this position and can no longer help, but whether or not he does history shows that his uncle's position, whilst useful in obtaining a passport in 2015, was not sufficient to protect the appellant in 2011 from attacks, and I do not find it would be now. With respect to the particular risks faced by this appellant I find that the appellant will not have the sufficiency of protection he reasonably requires in the context of the difficulties endemic in the Albanian police and the potency of the threat he faces from the particular gang.

52. As such I conclude that the appellant is entitled to succeed in his appeal against deportation as his removal to Albania would place him at real risk of serious harm contrary to Article 3 ECHR. In these circumstances I do not need to consider separately the appeal under Article 8 ECHR, although it is clearly implicit in my conclusions that it would be contrary to Article 8 ECHR for him and his family to return to Albania.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

2. I set aside the decision of the First-tier Tribunal dismissing the deportation appeal of the claimant on human rights grounds.

3. I remake the appeal by allowing the appeal on Article 3 ECHR human rights grounds.

Signed *Fiona Lindsley* 8th January 2021
Upper Tribunal Judge Lindsley

Annex A: Error of Law Decision

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Albania born in February 1992. He arrived in the UK illegally in May 2015. On 30th March 2017 he was convicted of possession with intent to supply class A drugs and given a three year' and six month sentence of imprisonment. A deportation order was signed against him as a result of this conviction and he made an asylum and human rights claim, which was refused in the respondent's decision of 21st May 2018. His appeal against that decision was dismissed on all grounds by First-tier Tribunal Judge Pooler in a determination promulgated on the 5th December 2019.

2. Permission to appeal was granted by Upper Tribunal Judge Blum on 17th February 2020 on the basis that it is arguable that the First-tier Tribunal erred in law when considering the protection claim by mistakenly disregarding the arguably sourced Wikipedia evidence; by failing to consider the full evidence of the appellant's partner who was found to be a credible witness; and by arguably overlooking the reference to threats to the appellant in the pre-sentence report and in requiring corroborative evidence from the police. The grounds relating to Article 8 ECHR are found not to be arguable, although the outcome of the appeal on this basis will be affected by the success of the arguments relating to the protection claim.

3. In light of the need to take precautions against the spread of Covid-19 and with regard to the overriding object set out in the Upper Tribunal Procedure Rules to decide matters fairly and justly directions were sent out to the parties by Upper Tribunal Judge Mandalia by email on 28th April 2020 seeking written submissions on the assertion of an error of law with a view to determining that issue on the papers, and giving an opportunity for any party who felt that a hearing was necessary in the interests of justice to make submissions on that issue too. Submissions were received from the appellant but not the Secretary of State in response to these directions, despite these being resent to the Secretary of State with a copy of the submissions of the appellant by the Upper Tribunal lawyers by email on 2nd July 2020.

4. The matter came before me to determine whether it is in the interests of justice to decide this matter without a hearing and if so to determine whether the First-tier Tribunal has erred in law and if so whether the decision should be set aside. I find, whilst appreciating that this is an issue of great importance to the claimant given that it determines his Article 3 ECHR rights in the context of a deportation which will potentially separate him from his family in the UK, that the issues which arise are discrete and the appeal can, I find, be decided fairly and justly in this way. Whilst there is an objection to this matter proceeding by

way of a paper decision from the appellant the objections are all generic and do not address why this part of this individual case cannot be fairly determined on the papers, thus progressing the appellant's appeal without further delay.

Submissions – Error of Law

5. In the grounds of appeal and submissions drafted by Ms C Bayati of counsel for the appellant argues that the First-tier Tribunal made errors of law in the assessment of the credibility of the appellant's account by requiring corroborative evidence when such is not required and could not be obtained without undue difficulty (contrary to the proper direction on this point at paragraph 45 of the decision) at paragraph 46 of the decision, and in a context where the evidence of his partner was accepted as credible at paragraph 43 of the decision and went to the bombing of her car, intimidation of the appellant after his arrest and an attempted burglary. The partner had not simply sent an email, as contended by the First-tier Tribunal, but had also sent a letter and three crime references about these matters. The First-tier Tribunal also accepted that the appellant had injuries as a result of an explosion in Tirana and a gunshot injury based on medical evidence.

6. Further the First-tier Tribunal found that there was a complete absence of evidence that the appellant couriered the drugs which led to his conviction due to threats made to him but this was not accurate because reference was made to this in the Sentencing Remarks, pre-sentence report and OASYS report . The First-tier Tribunal also erred in law in not giving weight to the Wikipedia article about NK, the gangster he says threatened him, as this was done on the basis that there were no sources when in fact this article was sourced. The First-tier Tribunal also rejected the evidence from the Panorama online report about the explosion in the appellant's flat in Tirana as it failed to mention NK and RZ were responsible, but as the appellant says that they have influence with the authorities it is unlikely that a news report would mention them.

7. It is also argued that there were errors in assessing the Article 8 ECHR claim because the appellant's son would be left in the sole care of the appellant's partner who suffers from anxiety and depression, a factor not considered by the First-tier Tribunal when determining whether it would be unduly harsh if the appellant were deported.

Conclusions – Error of Law

8. The appellant's protection claim is based on a threat from two gangsters, NK and his right-hand man RZ, as a result of a debt of 25,000 Euros which passed to him from his father on his father's death in 2007. The appellant asserts that he is at real risk of serious harm contrary to Article 3 ECHR because of a history of violent attacks and threats both in Albania and in the UK from this gang which might be briefly summarised as follows. The appellant claims the threats to kill started in 2009; followed by a bomb explosion in his flat in Tirana in October 2011 said to have been planted by RZ; followed by being shot in the leg whilst driving in Tirana by RZ in November 2011; followed by the

appellant's car being damaged in an explosion in the UK in October 2016 carried out by an associate of NK; which was followed by threats if he did not carry a package on behalf of the gangster, which he agreed to do and which led to his criminal conviction.

9. The First-tier Tribunal correctly directs itself at paragraph 45 of the decision that an account may properly be found to be shown on the lower civil standard of proof without corroborative evidence unless such evidence could have been obtained by the appellant without undue difficulty or risk.

10. The First -tier Tribunal finds that the appellant's partner, AB, is found to be a generally credible witness at paragraph 10 of the decision. The medical evidence from her GP is that she suffers from depression and anxiety, and took an overdose of paracetamol in 2008. At paragraph 43 it is accepted that appellant's car was damaged in the UK in an explosion in October 2016 because of the credibility of her evidence on this matter.

11. The First-tier Tribunal accept that the appellant suffers from severe depressive episode and anxiety, and trauma related symptoms based on the medical report of Dr Sinha, who also recorded scars which were highly consistent with him being struck by shrapnel in October 2011 and a scar consistent with being caused by a gunshot wound in November 2011 at paragraphs 36 and 37 of the decision. The First-tier Tribunal finds that the Panorama Online article dated 22nd October 2011 was consistent with the history of an explosion at the appellant's flat in October 2011 and a link to a drugs gang dispute but notes it does not mention NK by name, see paragraphs 40 to 42 of the decision. At paragraph 49 it is accepted as likely that he was injured in 2011 in an explosion in Tirana, and possible that he received a gunshot wound in 2011 too.

12. S.8 matters aside the First-tier Tribunal finds against the appellant's credibility in his history of being at real risk from NK and his gang, despite the above accepted evidence, particularly because there is nothing about the UK explosion in 2016 having been reported to the police as being related to the NK gang ; or evidence that he raised the issue that it was threat from this gang which led to his criminal behaviour and conviction in 2017.

13. I find however that the First-tier Tribunal has erred in law as it has failed to take account of the following material evidence which potentially supports the contention that the appellant has been exposed to Albanian gang violence in the UK:

- The witness statement of his partner (who is found to be a credible witness) at D10 of the respondent's bundle which includes information about the police installing a panic button and an intruder alarm in their home due to intimidation, this is also repeated at H 20 in the appellant's Pre-sentence Report and at H10 in the OASys Report.
- From the Sentencing Remarks at B2-3 of the respondent's bundle it is clear that at the outset of the criminal proceedings that the appellant had intended to run a defence which was subsequently abandoned, and from the pre-

sentence report at H20 of the respondent's bundle it is clear that this would have been a defence based on duress, as he says he was pressurised into acting as a drugs courier to pay of his father's debt by Albanian organised criminals and at H21 in the risk assessment it is concluded that although the current risk of serious harm is low: "there appears to be ongoing risk of harm to him and his family from criminal associates." The OASys Report at H10 of the respondent's bundle also includes the conclusion under analysis of offences that his criminal behaviour was either "for financial gain or as he claims under duress to repay his father's debts", and if his version is correct concludes: "he and his partner and son are at risk".

14. I also find that the Wikipedia gangster article about NK is in fact sourced and so could not be discounted on the basis that it is not, as is, at least in part, done at paragraph 39 of the decision by the First-tier Tribunal and that this amounts to a material error for failing to give weight to evidence for mistaken reasons of fact which could have provided corroborative evidence of the nature of the threat the appellant says he is facing.

15. The grounds do not identify any evidence which supports the contention that the appellant's partner's depression and anxiety, which are treated with sertraline, would impact on her parenting of their son such as to make it unduly harsh, a test going beyond the normal effects of deportation of a loved parent on a child, for her to be their child's sole parent in the UK whilst he was deported. The medical evidence from Handsworth Medical Practice does not raise any such issue, and clearly the appellant's partner managed to be his sole parent and primary carer during the period of the appellant's imprisonment. In any case the First-tier Tribunal found that it would not be unduly harsh for the appellant's partner and son to accompany him to Albania at paragraph 65 of the decision, where the appellant could continue to be his son's primary carer if this is what the family found to be best for all. I do not find any separate error of law in the determination of the appeal on Article 8 ECHR grounds.

16. Clearly all of the findings and outcome on Article 8 ECHR grounds will however have to be revisited in the remaking of the appeal if on remaking the appellant is found to be at Article 3 ECHR risks on return to Albania.

17. I specifically preserve the following from the decision of the First-tier Tribunal:

- the concession from the appellant that an appeal was not pursued on asylum grounds at paragraph 4 of the decision
- the assessment that the appellant's partner is a credible witness at paragraph 10 of the decision
- the common ground summary of the appellant's criminal offending history at paragraph 12 of the decision
- the findings with respect to the medical evidence at paragraphs 33 to 38 of the decision, and the finding at paragraph 49 that the appellant's injuries make it likely that he was injured in an explosion in Tirana and possible that he received a gunshot injury.

- the findings with respect to the Panorama online report at paragraphs 40 to 42 of the decision
- the findings with respect to the appellant's partner's evidence about the explosion which damaged the appellant's car in October 2016 and the attempted burglary at paragraphs 43 and 44 of the decision
- the s.8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 findings at paragraph 48 of the decision
- the finding that no weight could be placed on the letters from the appellant's uncles at paragraph 50 of the decision.

18. The rest of the findings in the credibility section are set aside, particularly those at paragraphs 39, 46-47, 51, and those after the third sentence at paragraph 49 of the decision.

19. The remaking will take place in the Upper Tribunal as I find that it does not involve extensive new fact finding.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

2. I set aside the decision of the First-tier Tribunal dismissing the appeal of the claimant on human rights grounds.

3. I adjourn the remaking hearing.

Directions - Remaking

1. Having regard to the Pilot Practice Direction and the UTIAC Guidance Note No 1 of 2020, the Upper Tribunal is provisionally of the view that the forthcoming hearing in this appeal might properly be held remotely, by Skype for Business or other similar platform, on a date to be fixed.

2. **No later than 14 days** after these directions are sent by the Upper Tribunal (the date of sending is on the covering letter or covering email):

   (a) the parties shall file and serve by email any objection to the hearing being a remote hearing at all/by the proposed means; in either case giving reasons; and

   (b) without prejudice to the Tribunal's consideration of any such objections, the parties shall also file and serve:

(i) Skype contact details and a contact telephone number for any person who wishes to attend the hearing remotely, which might include the advocates, the original appellant or an instructing solicitor; and

(ii) dates to avoid in the period specified.

3. **If there is an objection to a remote hearing**, the Upper Tribunal will consider the submissions, and will make any further directions considered necessary.

4. **If there is no objection to a remote hearing**, the following directions supersede any previous case management directions and shall apply.

i. **The parties** shall have regard to the Presidential Guidance Note: No 1 2020: Arrangements During the Covid-19 Pandemic when complying with these directions.

ii. The parties shall file with the Upper Tribunal and serve on each other (a) an electronic skeleton argument and (b) any rule 15(2A) notice to be relied upon within **28 days** of the date this notice is sent.

iii. The appellant shall be responsible for compiling and serving an agreed consolidated bundle of documents which both parties can rely on at the hearing. The bundle should be compiled and served in accordance with the Presidential Guidance Note [23-26] at least **7 days before the hearing**.

5. The parties are at liberty to apply to amend these directions, giving reasons, if they face significant practical difficulties in complying.

6. Documents or submissions filed in response to these directions may be sent by, or attached to, an email to [email] using the Tribunal's reference number (found at the top of these directions) as the subject line. Attachments must not exceed 15 MB. This address is not generally available for the filing of documents.

7. Service on the Secretary of State may be to [email] and to the original appellant, in the absence of any contrary instruction, by use of any address apparent from the service of these directions.

Signed *Fiona Lindsley* 10th July 2020
Upper Tribunal Judge Lindsley