IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001015
PA/50053/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 11th of October 2024

Before

UPPER TRIBUNAL JUDGE LODATO

Between

KR

(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Dr Chelvan, counsel instructed by Fisher Stone solicitors
For the Respondent: Ms Nwachuku, Senior Presenting Officer

Heard at Field House on 1 October 2024

DECISION AND REASONS

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

Introduction

1. This decision follows the resumed hearing for this appeal heard on 1 October 2024. The background to the appeal is set out in the error of law decision of 16 August 2024. The appellant, an Albanian citizen, appeals against the decision of the respondent, dated 19 December 2022, refusing his protection and human rights claim. In short, his factual case is that he was targeted by a criminal gang when he was a schoolboy for the purposes of forced labour in order to pay off a debt owed by his father. At the error of law hearing, it was found that the First-tier Tribunal, which had allowed the appellant's appeal, had erred in law and the decision was set aside.

Legal Framework

2. To succeed in an appeal on asylum grounds, the appellant must show a well-founded fear of persecution for a Convention reason (race, religion, nationality, membership of a particular social group, political opinion). The burden of proof rests on the appellant. As the asylum claim was made on or after 28 June 2022, s.32 of the Nationality and Borders Act 2022 ('the 2022 Act') applies. In considering whether the appellant qualifies as a refugee, I must apply a two-stage test. As per the guidance in JCK (s.32 NABA 2022) Botswana [2024] UKUT 00100, I must first determine the following matters on the balance of probabilities:

    (a) Taking the appellant's claim at its highest, is there a convention reason?

    (b) Does the appellant fear persecution for that convention reason?

3. If so, I must go on to determine whether it is reasonably likely that:

    (a) The appellant would be persecuted for that Convention reason;

    (b) There would not be sufficient protection available; and

    (c) The appellant could not internally relocate.

4. Section 31 of the 2022 Act addresses the meaning of persecution and actors of persecution in the following terms:

> ***31 Article 1(A)(2): persecution***
>
> *(1) For the purposes of Article 1(A)(2) of the Refugee Convention, persecution can be committed by any of the following (referred to in this Part as "actors of persecution")—*
>
> *(a) the State,*

(b) any party or organisation controlling the State or a substantial part of the territory of the State, or

(c) any non-State actor, if it can be demonstrated that the actors mentioned in paragraphs (a) and (b), including any international organisation, are unable or unwilling to provide reasonable protection against persecution.

(2) For the purposes of that Article, the persecution must be—

(a) sufficiently serious by its nature or repetition as to constitute a severe violation of a basic human right, in particular a right from which derogation cannot be made under Article 15 of the Human Rights Convention, or

(b) an accumulation of various measures, including a violation of a human right, which is sufficiently severe as to affect an individual in a similar manner as specified in paragraph (a).

(3) The persecution may, for example, take the form of—

(a) an act of physical or mental violence, including an act of sexual violence;

(b) a legal, administrative, police or judicial measure which in itself is discriminatory or which is implemented in a discriminatory manner;

(c) prosecution or punishment which is disproportionate or discriminatory;

(d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;

(e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts as described in Article 1(F) of the Refugee Convention (on which, see section 36).

5. Section 33 addresses the meaning of the various Refugee Convention reasons. Where relevant, it provides:

33 Article 1(A)(2): reasons for persecution

(1) For the purposes of Article 1(A)(2) of the Refugee Convention —

[…]

(d) the concept of political opinion includes the holding of an opinion, thought or belief on a matter related to a

potential actor of persecution and to its policies or methods, whether or not the person holding that opinion, thought or belief has acted upon it.

(2) A group forms a particular social group for the purposes of Article 1(A)(2) of the Refugee Convention only if it meets both of the following conditions.

(3) The first condition is that members of the group share—

(a) an innate characteristic,

(b) a common background that cannot be changed, or

(c) a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it.

(4) The second condition is that the group has a distinct identity in the relevant country because it is perceived as being different by the surrounding society.

6. Sufficiency of protection and internal relocation are the subjects of ss.34 and 35:

34 Article 1(A)(2): protection from persecution

(1) For the purposes of Article 1(A)(2) of the Refugee Convention, protection from persecution can be provided by—

(a) the State, or

(b) any party or organisation, including any international organisation, controlling the State or a substantial part of the territory of the State.

(2) An asylum seeker is to be taken to be able to avail themselves of protection from persecution if—

(a) the State, party or organisation mentioned in subsection (1) takes reasonable steps to prevent the persecution by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution, and

(b) the asylum seeker is able to access the protection.

35 Article 1(A)(2): internal relocation

(1) An asylum seeker is not to be taken to be a refugee for the purposes of Article 1(A)(2) of the Refugee Convention if—

(a) they would not have a well-founded fear of being persecuted in a part of their country of nationality (or in a case where they do not have a nationality, the country of their former habitual residence), and

(b) they can reasonably be expected to travel to and remain in that part of the country.

(2) In considering whether an asylum seeker can reasonably be expected to travel to and remain in a part of a country, a decision-maker—

(a) must have regard to—

(i) the general circumstances prevailing in that part of the country, and

(ii) the personal circumstances of the asylum seeker;

(b) must disregard any technical obstacles relating to travel to that part of that country.

7. To succeed on an appeal on humanitarian protection grounds the appellant must not be a refugee; they must show substantial grounds for believing that they would face a real risk of suffering serious harm in their country of origin. For all practical purposes, this is synonymous with the reasonable degree of likelihood applicable in a claim for asylum (see Kakaj (standard of proof, non-state actors) Albania [2001] UKIAT 00018, as affirmed on appeal, [2002] EWCA Civ 314). The burden of proof rests on the appellant.

8. This decision should be read in conjunction with the error of law decision (annexed to this decision) which includes an analysis of the legal principles which apply in a case where it is suggested that the convention reason of political opinion applies in relation to a non-state persecutor.

9. The Court of Appeal considered the meaning of integration in the context of the deportation of a foreign criminal in Kamara v SSHD [2016] 4 W.L.R. 152. At paragraph 14 of the judgment of Sales LJ (as he then was), the following interpretation was given:

> *In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the*

> *society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life.*

10. The meaning of very significant obstacles was considered by the Upper Tribunal in Treebhawon [2017] Imm. A.R. 790 where the following guidance was provided at paragraph 37:

> […] *The other limb of the test, "very significant obstacles", erects a self-evidently elevated threshold, such that mere hardship, mere difficulty, mere hurdles and mere upheaval or inconvenience, even where multiplied, will generally be insufficient in this context.* […]

11. The Court of Appeal, in Parveen v SSHD [2018] EWCA Civ 932, clarified the Treebhawon summary of the threshold. Underhill LJ stated:

> *I have to say that I do not find that a very useful gloss on the words of the rule. It is fair enough to observe that the words "very significant" connote an "elevated" threshold, and I have no difficulty with the observation that the test will not be met by "mere inconvenience or upheaval". But I am not sure that saying that "mere" hardship or difficulty or hurdles, even if multiplied, will not "generally" suffice adds anything of substance. The task of the Secretary of State, or the Tribunal, in any given case is simply to assess the obstacles to integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether they regard them as "very significant".*

The Hearing

12. The issues to be determined in remaking the decision were crystallised at [29] of the error of law decision in the following terms:

> *The case will therefore be listed for a resumed hearing in the Upper Tribunal for the decision to be re-made on protection (specifically convention reason, risk on return, sufficiency of protection and internal relocation), Article 3 and Article 8, on a date to be notified to the parties.*

13. The findings of fact set out at paragraph 31 of the First-tier Tribunal decision were preserved. It was confirmed at the outset of the hearing, that the respondent did not therefore seek to challenge the appellant's narrative evidence. I approach his evidence as truthful. For this reason, he was not required to give oral evidence and the remaking hearing proceeded on submissions only. I have carefully considered the detailed submissions of Dr Chelvan as well as the more concise arguments of the

respondent. I will address any submissions of relevance in the context of my discussion of the issues to be decided in the section below.

Discussion

14. In accordance with the structured approach identified in JCK, the first question I must ask myself is whether the appellant has established on the balance of probabilities that he has a characteristic which could cause him to fear persecution. Simply put, taking the appellant's case at its highest and bearing in mind that the credibility of his narrative account is not in dispute, is there a convention reason? Paragraphs [13]-[14] of JCK are of assistance in assessing this foundational issue:

> *The decision-maker is not required here to consider whether the characteristic, or imputed characteristic, has in fact attracted persecution, or whether it will do so in the future. The simple question is whether the claimant has a protected characteristic which could cause them to fear. In many cases this will be straightforward. Applicants fearing persecution because they have an outwardly obvious characteristic such as their gender or race will have little difficulty in discharging the burden of proving this matter on a balance of probabilities. Other, more opaque, characteristics could be more challenging to discern. Whether someone is gay, or holds a particular religious or political belief is not something that can be seen with the naked eye, or by making windows into souls. It is something that must be evaluated on the evidence in the round, but care should be taken not to automatically reject, at this first stage, a claimed characteristic by reference to the overall credibility of the claim. The focus must be on the characteristics.* […]
>
> *The answer is not, however, always going to be that simple. There are certain classes of applicant for whom it will be necessary to consider the country context in order to answer the question at s32(2)(a). Sub-sections 33(2)-(4) NABA 2022 require a member of a particular social group to demonstrate not only the innate characteristic possessed by, for instance, an ethnic group, but they must also demonstrate that they have "an identity in the relevant country because it is perceived as being different by the surrounding society". That 'social visibility' test can only be applied by looking carefully at the country background material (both expert and general), which is, at this stage, to be assessed on the balance of probabilities. Decision-makers must however be mindful that they are not here evaluating risk.*

15. The appellant claims to be at risk of persecution on account of his actual or imputed political opinion in refusing to succumb to the pressure which was brought to bear in coercing him to work to pay off his father's debts. As can be seen from the summary of Gomez (Non-state actors: Acero-Garces disapproved) Colombia * [2000] UKIAT 00007 in the annexed error

of law decision, it is necessary to consider two fundamental questions. First, do any potential persecuting criminal gang members occupy a political space in Albania such that they play a role in major power transactions in Albanian society? Second, would any putative persecutor target the appellant *because* of his actual or imputed political opinion (referred to as the "nexus test" in Gomez).

16. Dr Chelvan argued that it mattered not that the criminal gang in question was not identified in the evidence. He further argued that Gomez must now be seen against the language used in s.33(1)(d) of the 2022 Act where it is stated that a political opinion includes an opinion about the methods used by a potential actor of persecution. I am not persuaded that the language used in s.33(1)(d) so fundamentally changed the meaning of political opinion in the context of asylum claims. The reference to "methods" does not, in my interpretation, qualify the legal meaning of political. If that were so, the 2022 Act would run the risk of widening the definition of political opinion to such an extent that the holding of any opinion about the methods of any potential actor of persecution would amount to a convention reason. Followed to its logical end, an opinion held about the methods used by any non-state actor would potentially qualify as the platform for an asylum claim. This was precisely the danger identified at [38] of Gomez where it was found that the actor of persecution must have a political quality going to major power transactions in a given society. There is simply no evidence in this appeal that the criminal gang which targeted the appellant occupied such a political space in the appellant's home area, or Albania more widely. I accept the appellant's evidence that he knew very little about the gang, expressed most vividly in response to question 154 of his substantive interview when he frankly said that he did not know if the gang had any connections to the authorities. On the available evidence it would be entirely speculative to conclude that this gang were in any way engaged in major power transactions in Albania. There is no evidence upon which it could be sensibly concluded that this gang are political. As such, even if the appellant was targeted because he expressed an opinion in refusing to work to assist their criminal activities, I find that this was not a political opinion.

17. The absence of any evidence tending to identify the gang, or any of its members, dovetails with the considerations discussed above. While it is correct that EMAP (Gang violence – Convention Reason) El Salvador CG [2022] UKUT 00335 is a country guidance decision about particular gangs in El Salvador, it does serve to illustrate that something needs to be known about non-state actors of persecution before the conclusion can sensibly be reached that those whom the applicant fears function as part of the political landscape. There is no such evidence here to add the necessary political dimension to this criminal gang. The expert opinion evidence of Mr Kosumi does not plug this evidential gap because his generalised commentary about the nature and influence of Albanian criminal gangs does not tell us anything about this particular gang. It cannot be inferred from the mere existence of powerful drugs and trafficking gangs in Albania

that this particular gang falls into that category. Generalised expert commentary about the power and reach of some Albanian criminal gangs cannot assist in the assessment of the scale of this gang's criminal enterprise. At [11] of his most recent addendum report, Mr Kosumi discussed the "Albanian narcotic mafia", but there is simply no evidence that the gang who targeted the appellant is part of any such wider organised crime group. This commentary was in response to a question posed in the instructions about "the profile of ~~this~~ criminal gangs" [strikethrough in original]. This only goes to show that the expert was not even asked to address his mind to the particular gang in question. This can only be because so little is in fact known about the potential actor of persecution and certainly not enough to attribute a political quality to their operation.

18. In support of the proposition that the gang the appellant fears not only continues to exist but remains interested in his family, Dr Chelvan relied upon [24] of the set aside decision of First-tier Tribunal Judge Cameron. Here, it was noted that the appellant had given evidence that his sister made him aware that his father was still receiving threats approximately two months before the hearing. While I accept the credibility of the appellant's evidence about what he was told by his sister, there are limits to the weight this double hearsay can bear. The nature of the threats is unclear and there is nothing to indicate that there was any continuing interest in the appellant. This evidence does not reveal anything of the scale, power and reach of the gang to properly position it within political territory.

19. In light of the conclusion I have reached above about whether the criminal gang could be said to occupy a political space, it is not strictly necessary to assess whether the appellant would be targeted because of this opinion. However, the appellant's case also fails in approaching this question from the vantage point of considering the 'nexus test'. Even taking the appellant's case at its highest, that he made his opinion clear that he was not prepared to work for this gang because of his moral objections, there is nothing to indicate that this was a reason for the ill treatment he suffered. This necessarily forms the backdrop against which consideration turns to whether this might be a reason for him being targeted in the future. The appellant's case has always been that he endured physical violence from the gang because he refused to acquiesce to the demands made of him to undertake criminal work to pay off his father's debt. Beyond the appellant's assertion that he made his feelings known that he objected to the gang's criminal activities, there is nothing whatsoever to suggest that the ill treatment was motivated by his opinion as opposed to simply using criminal violence to secure his cooperation.

20. For the foregoing reasons, the appellant has not come close to establishing on the balance of probabilities that the gang he fears has a political quality nor that he would be at risk for taking a stand against the methods they use.

21. An alternative convention reason was advanced as underpinning the asylum claim, namely, that the appellant was a member of a particular social group as a potential victim of trafficking. During the hearing, Dr Chelvan took me to various passages of the July 2024 CPIN on human trafficking in Albania to support the contention that the appellant has the kind of profile which would place him within a particular social group vulnerable to this form of exploitation and persecution. The appellant's argument was articulated at [11(a)-(b)] of the skeleton argument served for the purposes of the remaking hearing:

> *The Upper Tribunal are invited to make the following findings as to law and fact:*
>
> > *as was submitted in the May 2024 skeleton argument, if the appellant had not refused to work for the criminal gangs, i.e forced labour, based on the above acceptance of his narrative and fear of the gang, he would have been able to make in the UK what would be, on the civil standard, a plausible application under the Modern Slavery Act 2016 with a consequent positive conclusive grounds decision;*
> >
> > *On this basis, applying the reasoning of the David Neale blog posts from 2022, this would provide the basis of a finding of Particular Social Group convention reason, on return due to the shame ('difference') victims of trafficking/modern slavery face in Albania, independent from persecution;*

22. The above arguments were amplified in oral submissions with the argument that the stigma and shame a potential male victim of trafficking would feel would further mark him out within the wider society. While it was suggested that the posited group was not identifiable solely with reference to the persecution which might be suffered, it seemed to me that this was the only characteristic which might coherently bind such a group together. It is notable that the country guidance decisions which have considered the existence of particular social groups in the context of the risk of being trafficked, have been focussed on individuals who have already been trafficked. An example is TD and AD (Trafficked women) CG [2016] UKUT 00092 (IAC) where paragraph (h) of the headnote begins with: "*Trafficked women from Albania may well be members of a particular social group on that account alone*" before relevant factors were identified which might go to the risk of persecution. The particular social group, trafficked women, was identified before the risk factors denoting a risk of future persecution were outlined. The argument advanced before me was the reverse. Dr Chelvan sought to persuade me that the appellant had a range of characteristics which put him at risk of being trafficked, notwithstanding that he had not been trafficked in the past, and that this constellation of factors placed him within a particular social group. This appeared to me to be a clear example of seeking to define a particular social group by the persecution feared, an error of circular reasoning which the House of Lords have repeatedly cautioned against (see Shah &

Islam 2 W.L.R. 1015 at page 1037H-1038C and K & Fornah v SSHD [2007] 1 AC 412 at [44], [57]-[58] and, in particular, [120]). It struck me as telling that no attempt was made to label the particular social group of which the appellant was said to be a member. The appellant's nebulous arguments about the particular social group he was said to be a member of are impossible to satisfactorily reconcile with the second condition of s.33(4) of the 2022 Act.

23. The appellant has not established on the balance of probabilities that he has a characteristic which could cause him to fear persecution for a convention reason either based on political opinion or his membership of a particular social group. The asylum claim falls at the first hurdle of s.32(2)(a) of the 2022 Act.

24. The appellant's protection claim was not limited to the Refugee Convention. His alternative argument was that his claim should succeed on humanitarian protection principles because there was said to be a reasonable degree of likelihood that he would be at risk of inhuman or degrading treatment in the shape of being trafficked on return or again being targeted by the criminal gang who persistently targeted him as a schoolboy before he left Albania.

25. In submitting that the appellant had the characteristics which would put him at risk of being trafficked, Dr Chelvan took me to paragraph 3.1.1 of the 2024 CPIN which noted that Albania is a primary source country for European victims of trafficking. He went on to point to the statistics cited in this section which noted that a mere 110 potential victims/victim of trafficking were identified in 2022 and that almost 30% of this number were male. It was further argued that this must amount to a reasonable degree of likelihood when measured against the observation in MAH (Egypt) v SSHD [2023] Imm. A.R. 713 that a 10% chance might be sufficient to meet the low standard of proof. I found this analysis to be statistically incoherent. At the risk of stating the obvious, the fact that almost 30% of a small cohort of identified trafficking victims were male (most of whom were boys) has little to do with the appellant's risk of falling victim to being trafficked on return (several years after he was targeted as a schoolboy) as a grown man with his own particular circumstances. This was not a comparison of like with like in sufficient numbers to be statistically instructive. The stronger point was that such a small number of potential victims/victims of trafficking were identified by the authorities in a country where this is a recognised problem. I agree with Dr Chelvan that this tended to indicate that the authorities did not take the problem as seriously as they should. This tallied with the US State Department Trafficking in Persons report: Albania 2024. At page 1 of this report, it was noted that the Government of Albania had not met the minimum standards in several key areas and there had not been a single conviction for trafficking offences for the second consecutive year.

26. Returning to the 2024 CPIN, paragraph 3.3.1 notes that, generally, male victims of trafficking are not at real risk of serious harm. It bears repeating

that the appellant's factual case, which I accept as credible, is only that attempts were made to force him work for a criminal gang. He resisted these attempts and has never been a male victim of trafficking. Paragraph 3.3.2 states as follows:

> *Men and boys who are from lower economic backgrounds, have a low level of education or lack of employment opportunities, have physical or mental disabilities, have experienced domestic abuse or family breakdown, and/or live in remote areas are more likely to be vulnerable to being trafficked or re- trafficked than men and boys generally.*

27. Dr Chelvan argued that most of these factors applied in the appellant's case, and he had already been targeted by a criminal gang for the purposes of forced labour. Paragraph 3.3.3 recognised that men and boys who have been trafficked may be reluctant to seek help. Paragraph 3.3.4 reiterated that men and boys who have already been trafficked will not generally be at risk of serious harm before repeating the list of factors which might suggest otherwise.

28. Reading the CPIN as a whole, it is clear to me that an important factor in assessing whether the appellant would be at risk of being trafficked on return is whether he has been trafficked in the past. He has been frank and honest that he resisted the attempts to traffic him as a schoolchild. The CPIN strongly suggests that the risk of a male being trafficked is generally very low even when the individual has previously been trafficked and must be lower still if, like this appellant, he has not.

29. I have read and considered all three of Mr Kosumi's expert reports, but I will focus on the most recent as it is tailored to the particular issues in the appeal as it now stands. At [6] of his third report, the expert states: "[KR] *will still be responsible for his father's debt. Upon returning, he will be burdened with substantial debts to loan sharks who collaborate with narcotic traffickers, leading to increased financial pressure"*. It was difficult to understand what evidence this was based on. Beyond the hearsay evidence of the appellant's sister discussed above, there was very little evidence about the gang to support any conclusions about the nature and existence of the gang, the extent of any debt which was still owed and who they regarded as responsible for it. The expert appeared to indulge in speculation. Yet more speculative assertions were evident at [19] where it was said that the gang the appellant feared was "part of the larger and broader narcotics Mafia in Albania and other European countries". Again, this was entirely unsupported by evidence. At [20], the expert observed that the criminal gang would quickly learn of the appellant's return to his home area, a proposition I accept given the background information he relied upon of his village being small with a population of only 7,500. At [31], it was noted that criminal gangs in Northern Albania are particularly powerful and influential, and that vulnerable boys and young men were primary targets for forced labour in the production of drugs.

30. Overall, I was struck by how readily the expert indulged in speculation uninformed by evidence. At [31], he appears to advocate on the appellant's behalf in describing the appellant as spending his formative years in the UK and Albania as "foreign country" to him. While I do not question the depth of Mr Kosumi's expertise, I had cause to doubt his objectivity.

31. I accept that the appellant is a credible witness who was previously targeted over an extended period of time with physical violence. However, I also note that he had the strength of character and will to resist the attempts to force him to work for a criminal enterprise to pay off his father's debt. I agree with the respondent's submissions that the passage of time and the appellant's maturation into a healthy young man are important factors. While he may have been targeted as a child, it does not follow that he remains at risk as an adult many years later. The reality is that very little is known about the gang who targeted him for criminal purposes in the past and there is not an objectively well-founded basis for concluding even to the lower standard that this gang would, if it still exists in the same form, would continue to be interested in this appellant. There is little from the objective information to support the proposition that the appellant, not having been trafficked in the past, would be at risk of being trafficked in the future.

32. When I look to the overall evidential picture, applying the low standard of proof in assessing whether the appellant will be at risk of serious harm on return, I am not satisfied that he has discharged his burden of proof on the available evidence. As I have found that the appellant is not at risk of persecution or serious harm, the ancillary matters of sufficiency of protection and internal relocation do not arise for consideration.

33. Turning to the question of whether the appellant would encounter very significant obstacles to integration, I have carefully considered the reports of Mr Kosumi. He noted, at [7] of his most recent report that he would face strong social stigma as a returning failed male asylum seeker. At [8], the point was made that many would assume he had been convicted of a crime in the UK. His assimilation into British culture was said to operate as a potential alienating factor on return, alienation which would be particularly acute in his remote home area in Northern Albania ([9]). Albania's high unemployment rate and the difficulty the appellant would face in securing any form of benefits would also weigh against him successfully integrating ([10] and [23]). At [22], the expert again appeared to take on the mantle of advocate in observing that "Feelings of nostalgia, reverse culture shock, and a sense of displacement may occur; adding here his mental health issues will make his reintegration difficult, if not impossible".

34. Balanced against these factors is the fact that the appellant grew up and spent most of his formative years in Albania. He was certainly in contact with his sister in the months leading up to the hearing before Judge Cameron. He has shown an ability to adapt to a foreign culture when he

had to overcome the challenges of being an unaccompanied asylum-seeking child and learning English. If he will experience an adjustment in returning to Albania, it pales in significance to the culture shock he has already successfully navigated in the UK. While unemployment rates may be high, and access to benefits difficult, he will be in a position to turn the experience and skills he has gained in the UK to his advantage. However, I accept that his schooling was interrupted as a child. There seemed to be little evidential support for the expert's conclusion that he would be stigmatised as a returning failed asylum seeker. On the balance of probabilities, I do not accept that this will be an obstacle to integration. On balance, and broadly evaluating the extent to which the appellant will be treated as an insider, I am satisfied that he will be able to understand how to effectively and fully function within Albanian society in a reasonable period of time. He will undoubtedly encounter challenges having spent several years in the UK, but these difficulties do not rise to the level of very significant obstacles. It was not suggested that the appellant's return would otherwise amount to a disproportionate interference with his Article 8 private life rights. In any event, while an adjustment will be required on return, there is nothing to indicate that this would amount to a breach of his Article 8 private life rights or result in him suffering unjustifiably harsh consequences.

Notice of Decision

In remaking the decision, the appellant's appeal against the decision of the respondent dated 19 December 2022 is dismissed.

Paul Lodato

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 10 October 2024

ANNEX A

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001015

First-tier Tribunal No: PA/50053/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

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Before

UPPER TRIBUNAL JUDGE KEBEDE
UPPER TRIBUNAL JUDGE LODATO

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

KR
(Anonymity Order made)

Respondent

Representation:
For the Appellant: Ms Nolan, Senior Home Office Presenting Officer
For the Respondent: Dr Chelvan, instructed by Fisher Stone Solicitors

Heard at Field House on 7 August 2024

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing KR's appeal against the respondent's decision to refuse his asylum and human rights claim.

2. For the purposes of this decision, we shall hereinafter refer to the Secretary of State as the respondent and KR as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal. Dr Chelvan invited us to go further and change the letters used for the appellant's name. We maintain the anonymity order of the First-tier Tribunal which properly conceals the appellant's identity.

3. The appellant is an Albanian citizen and is now 23 years old. He left Albania in 2017 and travelled through Italy and France before he arrived in the UK in a lorry on 12 December 2017. He initially claimed asylum on 10 January 2018. His claim was refused on 10 April 2019 and certified as clearly unfounded under section 94(1) of the Nationality, Immigration and Asylum Act 2002, without an in country right of appeal. He made a fresh claim on 20 September 2022. This too was refused on 19 December 2022 and is the subject of the present appeal proceedings.

4. The appellant's factual case was that he left Albania as an unaccompanied child because a criminal gang repeatedly targeted him, with escalating violence, to coerce him to work to satisfy a debt owed by his father. He claimed to have been targeted over an extensive period between March 2015 and November 2017. He refused their demands. In his substantive interview, he did not claim to know the names of those who were owed the debt [question 57], but they had been clear that they wanted him to do illegal work [question 69]. He was fearful of approaching the police for help [questions 80-82 & 160]. When asked if he knew whether the gang were connected to the authorities in Albania, he replied that he did not know [question 154].

5. The appellant relied on two expert reports from Vebi Kosumi which commented on the plausibility of the factual claims and the general country conditions in Albania touching on risk on return, sufficiency of protection and internal relocation. The first report was provided to the respondent before the claim was refused and the second was served after the refusal decision, but before the respondent reviewed her case in the appeal proceedings before the First-tier Tribunal. As will become clear, this sequence of procedural events took on some importance in the proceedings before us.

6. After summarising the conclusions reached in the previous refusal decision, the December 2022 refusal letter begins by asserting that the claimed fear of a criminal gang (non-state actors) does not engage the Refugee Convention [9]. It was accepted that the appellant was an Albanian national [10]. Between [12] and [23], the first report of Mr Kosumi was considered. Lengthy extracts from this report were included. It was not challenged that he was suitably qualified to comment on country conditions in Albania [15]. It was noted that he had not interviewed the appellant [19], relied on anecdotal accounts of unrelated Albanian nationals who had encountered criminal gangs [20] and did not have a sufficiently firm evidential basis for his conclusions about the plausibility of the appellant's account [21]. Overall, the above observations were relied upon to attach limited weight to the expert report [23].

7. The refusal letter went on to quote extensively from the December 2021 CPIN, Albania: Actors of Protection December 2021 before the conclusion was reached that sufficient protection, meeting the Horvath standard, was available [26-27 & 33-35]. At [35], the point was made that the appellant claimed to fear non-state agents and that it was not accepted that they had any influence over the state or affiliated with the authorities. At [28], the September 2021 CPIN on Albania was relied upon to conclude that the appellant could internally relocate. The reasoning which underpinned the asylum decision was relied upon to refuse the claim for humanitarian protection under Articles 2 and 3 of the ECHR [38-40]. Turning to Article 8 considerations, it was decided that no family life claim was advanced, that the appellant did not meet the requirement of Appendix Private Life and that there were no exceptional circumstances outside of the Immigration Rules [44-54].

8. The appellant appealed against the refusal of his protection and human rights claim to the First-tier Tribunal. An appellant's skeleton argument ('ASA') was served

on his behalf, drafted by Dr Chelvan (who continues to represent the appellant). At [3], it was argued that the claim engaged the convention reason of actual/imputed political opinion in accordance with Gomez (Non-state actors: Acero-Garces disapproved) Colombia * [2000] UKIAT 00007 and EMAP (Gang violence – Convention Reason) El Salvador CG [2022] UKUT 335. The expert evidence of Mr Kosumi was relied upon to suggest that sufficiency of protection and internal relocation were not available to the appellant. At [11] of the ASA, it was argued that the appellant's refusal to cooperate with the gang's demands discharged his burden to establish on the balance of probabilities the convention characteristic of actual political opinion. At [19] it was noted that the expert's second report, which post-dated the December 2022 decision letter, had not been considered by the respondent and this had referred to the violence used by criminal gangs when their demands were refused.

9. The respondent reviewed her case. In the introductory paragraph, it was asserted that points raised in the ASA which were not specifically addressed should not be treated as accepted [1]. The appellant was not regarded as credible, and it was asserted that EMAP did not apply to the claimed facts. Attention was drawn to the first expert report and reliance placed on the analysis in the December 2022 refusal letter. The position previously adopted in respect to sufficiency of protection and internal relocation was maintained.

10.The appellant's appeal was heard by Judge Cameron on 26 October 2023. The appellant gave oral evidence assisted by an interpreter. In a decision dated 2 January 2024, the appeal was allowed on asylum grounds, dismissed on humanitarian protection grounds and allowed on human rights grounds [50-52]. As a preliminary issue, it was noted that the respondent's representative indicated that the appellant's past treatment was no longer in dispute, but the existence of an "implied political opinion" remained in issue [7]. The issues to be determined were set out at [8] and included the 'credibility' of the existence of a convention characteristic; objective risk assessment; the plausibility of the claimed threat posed by Albanian criminal gangs taking account of country background material, specifically the expert reports; sufficiency of protection and internal relocation. The following key points emerge from the findings section of the decision:

- The appellant's narrative account was found to be consistent, credible and unchallenged [18, 23-26, 30-31 & 43].

- It was argued on the appellant's behalf that the power of Albanian gangs and official corruption was such that he fell within the findings of EMAP under the rubric of imputed political opinion [19].

- The judge noted the respondent's observations about the first expert report in the December 2022 decision letter and that he too had considered this report in full. He rejected the suggestion that it should attract little weight. [20-21 & 27-28]

- The judge referred to the February 2023 CPIN on Albania: Human Trafficking and noted the particular vulnerabilities of Roma and Egyptian children and a similar point made in a 2022 report of the US State Department [32-33]. Account was taken of unspecified guidance from the respondent about challenges within the Albanian criminal justice system and the lack of availability of shelters [34].

- The judge concluded that the respondent had sought to "distinguish" EMAP because mere criminality would not equate to political power [35]. "Country reports" were

found to show that corruption was rife and that there was complicity between criminals and the authorities [36]. The key finding appears at [37] in the following terms:

> *When considering the two-stage test in section 32 I take account of my positive credibility findings in relation to the appellant's evidence that he has suffered ill treatment in the past at the hands of the criminal gang. The objective evidence indicates that criminal gangs act with impunity and that the authorities are complicit. Although this is not on all fours with EMAP I am satisfied on the balance of probabilities that the actions of the criminal gangs and their connections to the authorities is sufficient for the appellant to show that the ill treatment he received can be classed as his having an imputed political opinion.*

- The judge went on to find that the appellant could not seek protection from the authorities, nor could he internally relocate given the territorial size of Albania and official complicity with the criminal gangs [41-42 & 44].

- Taking account of the findings made in respect to the protection grounds, the appellant was found to be at real risk of suffering ill treatment contrary to Article 3 [47].

- The judge began his assessment of Article 8 by stating that he would not consider this ground specifically because of the previous findings he had reached but nonetheless asserted that there were very significant obstacles to integration and compassionate and exceptional circumstances outside of the rules [48].

- "The above factors" were taken into account in the assessment that the appellant's private life interests outweighed the public interest in the maintenance of immigration control. The refusal decision was found to be a disproportionate interference the appellant's Article 8 rights [49].

11.We were provided with the manuscript notes prepared by the judge during the hearing which we have considered in full.

12.The respondent sought permission to appeal against Judge Cameron's decision. Following the refusal of permission to appeal in the First-tier Tribunal, the respondent renewed the application to the Upper Tribunal.

13.The first ground of appeal was that the judge misdirected himself in law in applying the reasoning of Country Guidance related to criminal gangs in El Salvador to criminal gangs in Albania. The facts which underpinned EMAP were said to be markedly different to those in the present matter and Judge Cameron failed to explain why the cases should be treated alike. The judge was also argued to have fallen into error in conflating the convention reasons of political opinion and membership of a particular social group.

14.The second ground of appeal contended that the judge misdirected himself in law in the approach he took to the country background information and the conclusions he reached on the issues of sufficiency of protection and internal relocation. At paragraphs 11-12 of the grounds, it is noted that the judge inexplicably referred to Roma or Egyptian ethnicity in a case where such factors played no part. The reasoning

of the judge was challenged on the basis that he had over-relied on the expert report and overlooked the country information relied upon by the respondent.

15.In a decision taken on the papers by Deputy UTJ Lewis, permission was granted without qualification in the heading of the notice. In the body of the decision, the permission judge addressed the paragraphs which supported the grounds. He found there to be “less obvious merit” in the argument that Judge Cameron conflated the convention reasons of political opinion and membership of a particular social group. While ground one was found to be arguable, it was observed that this did not amount to a challenge to the Article 3 conclusion. Paragraphs 10-12 of the grounds did not undermine the judge’s overall conclusion as to the underlying narrative. It was noted that paragraphs 13-14 of ground two overlapped with ground one and that the grant of permission was not limited and went to both the Refugee Convention and Article 3 grounds of appeal.

16.The error of law hearing was listed to be heard before UTJ Pickup on 21 May 2024 but was adjourned. In the notice of reasons for the adjournment, UTJ Pickup addressed Dr Chelvan’s submission that paragraphs 10-12 of the grounds ought to be excluded from any consideration of the lawfulness of Judge Cameron’s decision. At [10] of the notice of reasons for the adjournment, UTJ Pickup found that the grant of permission by DUTJ Lewis did not operate to exclude consideration of those points but that it was open to the Upper Tribunal to revisit the terms of the grant. The adjournment was granted to allow further time for those representing the appellant to obtain the record of proceedings in the First-tier Tribunal. It was further noted that the appellant’s representatives wished to explore a procedural point arising from paragraph 2.7 of the Presidential Practice Statement (No 1 of 2021) which might have the effect of shutting the respondent out from arguing ground two. UTJ Pickup expressed no settled view in respect to this procedural point and we address it in our findings below.

17.At the adjourned error of law hearing, we heard submissions from Ms Nolan for the respondent and Dr Chelvan for the appellant. We address these arguments in the analysis section below. Ms Nolan sought permission to rely on the note of the respondent’s advocate who appeared before Judge Cameron. Dr Chelvan resisted the application on the basis that the proper procedure had not been followed by the respondent. After it became clear that this note added nothing of substance to Judge Cameron’s note of the hearing, we declined to admit this further document because it was common ground between the parties that it was entirely neutral.

Analysis

18.A cornerstone of Dr Chelvan’s submissions during the hearing was that the procedural steps which led to Judge Cameron’s decision meant that the respondent could not now argue that the Judge was wrong to reach the conclusions he did in implicitly relying on the second expert report to find in the appellant’s favour on the issues in the appeal. This procedural argument hinged on the principle of ‘procedural rigour’ as recently emphasised in Lata (FtT: principal controversial issues) [2023] UKUT 00163 (IAC) and the terms of paragraph 2.7 of the Presidential Practice Statement. It is worth reminding ourselves what paragraph 2.7 states:

> Respondent’s Response. Within fourteen days of the ASA being provided the respondent must undertake a meaningful review of the appellant’s case, taking into account the ASA and appellant’s bundle, providing the result of that review and particularising the grounds of refusal relied upon.

> **Pro-forma or standardised responses will not be accepted by the Tribunal. The Review must engage with the submissions made and the evidence provided to the Tribunal.**
>
> [Bold in original]

19. It is right that the Practice Statement is clear that reviews must engage with the appellant's submissions and evidence. However, it is equally important to consider what it does not say. It says nothing about the sanctions which might flow from a breach of this procedural guidance. If the President intended that a breach should result in the respondent being shut out from advancing certain arguments, he could have easily said as much. The conceptual difficulty with Dr Chelvan's argument is that it would run the risk of encouraging the kind of minute analysis of reviews we saw in these proceedings where the failure to allude to an addendum report of an expert was elevated, in the appellant's submission, to a form of tacit agreement with this evidence on the part of the respondent. It is not difficult to see where this might lead. Unless the respondent explicitly dealt with each and every aspect of the appellant's bundle, it might well be argued that the respondent could be taken not to challenge it. In this matter, such an approach results in forensic absurdity. Mr Kosumi's addendum report begins by tethering it to his first report, which was squarely challenged in the December 2022 decision letter. If Dr Chelvan is right in his submission that the respondent's review had the effect of leaving the second report unchallenged, it results in incoherence where the respondent must be regarded as disputing the first report, but to accept the second which unarguably builds on the initial report.

20. The appellant's procedural argument also fails upon a natural reading of the decision. We were addressed at length about why the judge's note of the hearing tended to reveal that the judge must have approached the issues on the basis that the second expert report was not in dispute. However, we must look primarily to the decision itself to understand the approach taken by the judge to the evidence he considered in the context of the issues which were identified at the outset of the hearing. It could scarcely be clearer that the respondent took no issue with the broad credibility of the appellant's narrative of the events which preceded his departure from Albania. It was equally clear from the decision that the respondent continued to challenge the existence of a convention reason of political opinion and the questions of sufficiency of protection and internal relocation. It is impossible to reconcile this position with any kind of acceptance, tacit or otherwise, of the expert's second report. If the judge took this view from the respondent's review and the Practice Statement, he could have easily said so. We find it instructive that the judge did not formulate his reasoning with any express reference to the respondent's review, or indeed the second expert report.

21. The appellant invited us to effectively infer from the judge's decision that he had adopted the expert commentary. Again, we are satisfied that it would be wrong to amplify the judge's reasoning in this way. What is clear is that the judge accepted that the appellant had established a well-founded fear of persecution because of his imputed or actual political opinion. In so doing, the judge referred in broad terms to the power of Albanian gangs and rife corruption within the ranks of the Albanian authorities. During the hearing before us, Dr Chelvan argued that the appellant's case had always been advanced in reliance on the authoritative guidance in Gomez, as affirmed by EMAP. It was recognised, he said, that EMAP provides country guidance in relation to conditions in El Salvador and must be seen in that context. It is necessary for us to consider Gomez closely to assess whether Judge Cameron correctly applied

the principles of law which were identified in that starred guidance. The following key principles emerge from the judgment in Gomez:

- Caution must be exercised not to narrow the meaning of political beyond recognition and limited only to conventional political actors – each case must be assessed on its own facts [21, 30-31, 34, 41, 45 & 50]. However, that being said, any interpretation must have regard to the nexus test in that it is necessary to establish that the claimed risk of persecution must be "on account of" the reason identified – it need not be the only reason, but it must be a reason in the mind of the agent of persecution [22, 37 & 52-53].

- Important observations are to be found at [38], [40] and [54]:

> [38] […] *Even in the case of non-state actors therefore one cannot easily see how differences they may have with someone they persecute could be described as political unless they themselves have or express a political ideology or set of political objectives, i.e. views which have a bearing on the major power transactions relating to government taking place in a particular society. That is to say, the Tribunal doubts that the Refugee Convention ground of political opinion was meant to cover power-relationships at all levels of society. It may well make sense to speak in other contexts of the "politics of the family" or of "sexual politics" taking place between two persons, but to engage the Convention these power relationships must in some way link up to major power transactions that take place in government or government-related sectors such as industry and the media. Put another way, politics at the "micro" level must in some meaningful way relate to politics at the "macro" level.* […] *By the same taken* [sic]*, a neighbour from hell who targets a claimant may be someone who will inflict serious harm upon him; but without more one cannot sensibly attribute to the relationship between that neighbour and such a claimant a political dimension. Cases where an individual has been accepted as a non-state actor capable of imputing political opinion appear to be ones where that individual is effectively implementing the political views of either the state or some other body with political aims and objectives.*
>
> [40] […] *The risk of extortion threats from a criminal gang will not normally be on account of political opinion, but in some societies where criminal and political activities heavily overlap, the picture may be different.* […]
>
> [54] *Reflecting these common sense notions, the Tribunal would categorically reject the idea that even in countries such as Colombia where the boundaries between the political and the non-political have been heavily distorted by the conduct of paramilitary bodies and drug cartels, every case where such a body persecutes someone must be on account of an imputed political opinion. We would*

reaffirm the point made in Quijano (10699) that where the concern of persecutors was not a political one but rather to maintain their economic position through criminal activities and to that end intimidate, and, if necessary, eliminate those that oppose the pursuit of that aim, then there will be no conflict based upon refusal to perform political acts, but only criminal ones.

- There is no universal proposition that those acting against criminal elements will have a political opinion imputed to them [47].

22. Returning to Judge Cameron's central finding, at [37] of his decision, that the appellant was at risk for the Refugee Convention reason of his political opinion, there are plainly essential matters which have not been assessed on the face of the decision. In analysing Gomez, the Upper Tribunal in EMAP referred, at [63], to the need for a nuanced analysis when assessing the existence of a political dimension in this context. This echoes the passage cited above from Gomez, at [40]. There is nothing in Judge Cameron's decision which can be said to amount to an analysis of whether the nexus test had been established in that the judge has not explained if, and why, those who targeted the appellant to work to pay off his father's debt imputed a political opinion to him and were, or would be, minded to persecute him for that reason. The appellant was unable to identify the gang who targeted him in any meaningful sense. So while the expert sought to address the power and reach of Albanian criminal gangs in general terms, the judge needed to explain why he found, if he did so find, that this gang was engaged in the kind of major power transactions which might add a political hue to their criminal activities. Even if Dr Chelvan is right that Judge Cameron unquestioningly accepted everything stated in the expert reports, considerably more was needed, in the sense of nuanced analysis, before the conclusion could be reached that an ostensibly criminal gang occupied a political space in Albania and imputed a political opinion to a child who refused to work for them to satisfy his father's debt.

23. For the reasons explained above, we are satisfied that the judge's findings on the existence of the convention reason of political opinion involved a misdirection in law because there was no consideration of the key legal principles and fundamental factual matters going to this foundational issue.

24. At the hearing, Ms Nolan did not pursue any suggestion that the judge fell into legal error in conflating political opinion and membership of a particular social group. The same is true of the complaint made under paragraphs [10-12] under the heading of the second ground which related to the incongruous comments about Roma and Egyptian children. We need say no more about these matters.

25. Turning to the second ground of appeal, we are satisfied that the findings on sufficiency of protection and internal relocation cannot be separated from the foundational error of law discussed above. The consideration of the political and influential character of the criminal gang not only went to the existence of a Refugee Convention reason, but it also functioned as the platform for various other conclusions which followed. Brief findings were articulated at [41] that the appellant would not be able to seek the protection of the authorities because of corruption and the ties between the authorities and criminal gangs. This appears to be a reference to the earlier flawed and incomplete analysis of the power and reach of the criminal gang which targeted the appellant. A similar observation is made in the following brief paragraph about internal relocation where complicity between "a number of gangs" (not necessarily the gang which targeted the appellant) and the authorities was again

relied upon. Once the analysis in support of the existence of a political opinion falls away, the conclusions reached on sufficiency of protection and internal relocation lose the foundation on which they were built. These findings cannot stand in isolation and must also be treated as based upon misdirections of law.

26. Dr Chelvan urged us not to disturb the positive findings reached in relation to Article 8 of the ECHR. He argued that this had never been challenged in an articulated ground of appeal and that procedural rigour demanded that we ought not to interfere with the appeal being allowed on this human rights ground. The difficulty we have in adopting such a compartmentalised procedural approach is that the judge plainly relied on the legally erroneous findings in relation to the protection grounds to allow the appeal on human rights grounds. The judge repeatedly referred to his earlier findings in allowing the appeal on both Article 3 and Article 8 grounds. Again, we find that we cannot sensibly untether an analysis that was so clearly tightly bound with a finding we have found to involve an error of law. The reality is that this is not a question about the limits of the grounds of appeal. The real question is whether the findings on Article 3 and Article 8 should be preserved upon setting aside the decision. Because the human rights analysis is so interconnected with the tainted protection grounds findings, we are satisfied that these findings cannot be preserved.

27. The findings of fact in which the judge accepted the credibility of the appellant's narrative of the events which preceded his departure from Albania were not challenged by the respondent in the proceedings before Judge Cameron and we were not invited to revisit them if we were minded to find an error of law and set aside the decision. We can see no reason why the particular findings of fact at [31] of Judge Cameron's decision should not stand.

28. The parties ultimately agreed at the hearing that the decision should be remade in the Upper Tribunal if we set aside the decision as involving an error of law.

29. The case will therefore be listed for a resumed hearing in the Upper Tribunal for the decision to be re-made on protection (specifically convention reason, risk on return, sufficiency of protection and internal relocation), Article 3 and Article 8, on a date to be notified to the parties.

Directions

- Should the parties seek to rely upon any further evidence not previously before the First-tier Tribunal, that evidence shall be filed with the Upper Tribunal and served upon the other party in an indexed, consolidated bundle, together with any relevant application under Rule 15(2A) of the Procedure Rule, no later than 7 days before the date of the resumed hearing.

- Skeleton arguments shall be filed and served by both parties, no later than 3 days before the hearing.

- The resumed hearing is reserved to Upper Tribunal Judge Lodato.

Signed: P S Lodato
Upper Tribunal Judge Lodato

Judge of the Upper Tribunal
Immigration and Asylum Chamber

16 August 2024