Neutral Citation: [2017] NIQB 57 | *Ref:* **COL10282**

Judgment: approved by the Court for handing down | *Delivered:* **15/6/2017**

*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY AB FOR JUDICIAL REVIEW

AND IN THE MATTER OF THE DECISION BY THE SECRETARY OF STATE FOR THE HOME DEPARTMENT MADE ON 10 JULY 2016 NOT TO ACCEPT THAT THE APPLICANT'S FURTHER SUBMISSIONS DATED 7 JULY 2016 AMOUNT TO A FRESH CLAIM AND/OR HAVE A REALISTIC PROSPECT OF SUCCESS BEFORE AN IMMIGRATION JUDGE

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COLTON J

Introduction

[1] The applicant is a citizen of the Republic of Albania who was born in 1997.

[2] On 21 November 2014 the applicant arrived in the United Kingdom at Belfast International Airport as an unaccompanied minor being 17 years of age and holding false Italian identification. He was refused leave to enter.

[3] On 23 November 2014 the applicant claimed asylum. In essence he claimed to have a well-founded fear of persecution in Albania arising from his fear of the criminal who arranged for his arrival in the United Kingdom.

[4] On 25 November 2014 the Home Office referred the applicant as a potential victim of trafficking, which was accepted for further investigation on 28 November 2014.

[5] The applicant had a Screening Interview on 23 November 2014 and an asylum interview was completed on 24 February 2015. In support of his asylum application his legal representatives (Law Centre Northern Ireland) submitted a witness statement from the applicant, a letter from the applicant's parents, confirming his independent travel from Albania and a letter confirming an intended visit to Italy.

[6] On 9 April 2015 it was concluded that he was not a victim of trafficking.

[7] On 9 October 2015 the applicant's asylum claim was refused and certified under Section 94(3) of the Nationality Immigration and Asylum Act 2002 as "clearly unfounded".

[8] A pre-action protocol letter challenging the decision was sent to the respondent by the applicant's solicitor on 23 November 2015 to which the respondent replied on 24 November 2015. The matter was not pursued because, as per the applicant's solicitor's affidavit of 11 July 2016, "an attempt to secure legal aid which would enable the applicant to challenge certification by way of judicial review did not succeed".

[9] On 1 July 2016 the respondent issued removal directions to remove the applicant from the UK on 13 July 2016.

[10] The applicant made further submissions in relation to his asylum claim on 7 July 2016.

[11] By letter dated 10 July 2016, the respondent rejected the further submissions and concluded that they did not amount to a "fresh claim" and that taken together with previously considered material the applicant did not have a realistic prospect of success before an immigration judge.

[12] It is that decision which is challenged in this application, leave having been granted on 12 October 2016.

[13] A full hearing took place on 21 March 2017.

[14] At the hearing the applicant was represented by Mr Eric Peters and the respondent by Ms Rachel Best. I am obliged to both counsel for their helpful and detailed written and oral submissions.

Background facts

[15] The applicant was born in the village of Rrila in Albania. In his witness statement supporting the asylum claim he asserted that he had two sisters the elder of whom, aged 25, is profoundly deaf. He said his reason for wanting to leave Albania was to find work abroad in order to raise money for an operation to correct his sister's deafness. After his school term ended in June 2014 he approached a person in his village who had contacts with a network of criminals who could arrange for him to travel to the UK. He approached a loan shark in the village who lent him €2,500 for which the "network" provided him with false documents in the form of false Italian ID, tickets for a flight from Albania to Italy, a flight from Paris to Serbia, a flight from Paris to Belfast and a flight from Belfast to Manchester. In addition because he was under 18 he required written permission from his parents

which needed to be formally signed by a notary and a letter from the person that he would meet in Italy confirming that he would be residing with him. His parents signed the letter on a false premise. The signatory from the notary and the further letter required were arranged by the network.

[16] His expectation was that when he arrived in the UK the network would put him in contact with someone who would find him work in the UK. He was aware of other young men from his village who had gone to work in the UK in similar circumstances.

[17] He described how he travelled by bus from his village to Tirana and flew from Tirana into Rome. He used the fake Italian invite and his own passport at immigration control in Italy. He then travelled from Rome to Paris by train, again using his Albanian passport. The next morning he travelled to the airport in Paris and checked in for the Serbian flight with his own Albanian passport. He then discarded the passport and used his fake Italian ID to check on to the flight from Paris to Belfast.

[18] On arrival into Belfast he passed through immigration control but was very anxious. He asked for directions from the immigration officer but they were clearly suspicious of him and he was asked to step aside for questioning. At this point his mobile phone, which contained a SIM card provided by the network, rang. The call came on behalf of the network who asked where he was. When he explained that he was at the airport in Belfast and that he thought he had been caught he was advised to run which he did not do as he was afraid. After a long silence the speaker on the phone said "if you tell the police about who gave you the fake ID and how you came to the UK it will be bad for you and your family for us because that's our work". He was told to keep smiling because of the CCTV cameras.

[19] He was interviewed at the airport by the immigration authorities and I have been provided with the notes of that interview – "the Screening Interview".

[20] In the witness statement which supported his asylum claim he made the following case:

> "19. My fear of return to Albania relates to the network and the loan shark. I believe that if returned I would be targeted by them because I did not pay the loan shark money and I don't know what he will do to me, I will never be able to return this money to him, €2,500, an enormous amount of money in Albania and my family simply don't have this. Also the network will think that I have given their names to the authorities in the UK and will try maybe try and kill (sic). I have fear that both will try and harm my family. Neither my family nor I will get

> protection from the police due to the connection between the loan shark and the police. I could not move to another part of Albania and be safe there because they are a powerful criminal organisation throughout the country and they would find me."

[21] By way of letter dated 9 October 2015 the respondent wrote to the applicant, who was then residing at a flat in University Street, refusing the claim for asylum.

[22] The decision letter indicates that in light of all the evidence available the applicant had not established a well-founded fear of persecution so that he did not qualify for asylum.

[23] The letter also indicated that he had not shown there were substantial grounds for believing that he faced a real risk of suffering serious harm on return from the UK. Further it was determined that the circumstances of his case did not mean that his removal from the UK would breach his right to respect for family and private life under Article 8 of the European Convention on Human Rights. A claim for discretionary leave was also rejected.

[24] The respondent also certified the applicant's claim as "clearly unfounded" under section 94 of the National Immigration and Asylum Act 2002.

[25] The respondent provided detailed reasons for refusal running to 70 paragraphs.

Reasons for the October 2015 decision

[26] This decision is not under challenge. However I propose to summarise the consideration of the claim.

[27] In rejecting the applicant's fear of persecution on his return a number of matters were identified.

[28] To date there had been no contact by anyone on behalf of the network or in his home village with his family who have continued to live there without incident.

[29] It was also considered that should the applicant encounter any problems from the man involved with the network or the network itself he could approach the Albanian authorities for assistance as those whom he feared are considered to be "non-State actors" whose actions against him would not be sanctioned or condoned by the State. It was pointed out that according to the applicant himself members of the network had previously been arrested and imprisoned for offences in Albania.

[30] Regarding the fear of the man who lent the applicant the money that he will force him to work to repay the loan or harm his family again it is noted that he does not appear to have contacted either the applicant or his family since he left Albania.

[31] Any suspicion that this man is also a member of the network could be dealt with by the applicant approaching the Albanian authorities. It was noted that the applicant stated that this man's brother was a police officer which would impede his ability to get police assistance since he was local to the village. Any contact by his brother would not be reflective of the wider Albanian authorities.

[32] It was considered that the applicant could return to Albania in these circumstances.

[33] The decision also looked at the sufficiency of protection available to him in Albania. Reference was made to the House of Lords decision in Horvath [2000] UKHL 37.

[34] The decision-maker had specific regard to the availability of internal protection within Albania and to the Country Information and Guidance, Actors of Protection and Internal Relocation, August 2015 which stated:

> "The Ministry of Interior oversees the State Police and the Republican Guard. The State Police are the main organisation responsible for internal security. The Republican Guard protects senior State officials, foreign dignities and certain State properties. The Ministry of Defence oversees the Armed Forces, which also assists the population in times of humanitarian need. The State Intelligence Service (SHISH) gathers information and carries out foreign intelligence and counter-intelligence activities.
>
> Civilian authorities generally maintain effective control over the police, Republican Guard, Armed Forces and SHISH, although periodically State resources were used for personal gain and members of the security forces committed abuses.
>
> The Albanian State Police is the National Police and Law Enforcement Agency which operates throughout the Republic of Albania. The General Director is the highest administrative, technical and operational authority in the State Police, which sits structurally in the Minister of Interior. The General Director of State Police is made up of the following departments:
>
> Organised and Serious Crimes; Public Security; Border and Migration; Support Services; Police Training.

> Police did not always enforce the law equally. Personal associations, political or criminal connections, poor infrastructure, lack of equipment, or inadequate supervision often influenced enforcement of laws. Low salaries, poor motivation and leadership, and a lack of diversity in the workforce contributed to continued corruption and unprofessional behaviour. Impunity remained a serious problem, although the Government made greater efforts to address it. Police corruption was a problem.
>
> The Government has mechanisms to investigate and punish abuse and corruption. The Government's internal control service conducted audits, responded to complaints, and carried out investigations with increased emphasis on human rights, prison conditions and adherence to standard operating procedures. During the year the Ombudsman processed complaints against police officers, mainly relating to problems with arrest and detention. As of September the Ombudsman had received a 103 complaints and investigators were provided counsel in response to 70. The Ombudsman through the national mechanism for the prevention of torture, reported increased implementation of his recommendation related to mistreatment."

[35] It was recognised that Albanian Police Services face challenges however these were not due to any concerted policy on behalf of the authorities. It was felt that there was a functioning police service within Albania and that there would be opportunities to seek protection from the Albian authorities upon his return.

[36] It was felt that the references to the men involved in the network or "powerful criminal organisation" were speculative. It was pointed out that an individual to whom the applicant referred had previously been arrested and detained suggesting that he did not have the ability to subject the authorities to his will. Similar considerations apply to the wealthy man who loaned him the money and whose brother was in the police force. It was felt that the brother would not have sufficient influence over the Albian authorities and that the applicant could approach other police stations for assistance.

[37] It was felt that the applicant had failed to demonstrate that the authorities of Albanian would be unable or unwilling to offer him protection if he sought it. It was

felt that the Albanian authorities would be able to provide the applicant with effective protection to the standards set out in Horvath.

[38] The decision also considered internal relocation. During his asylum interview the applicant was asked whether he would consider relocating to Tirana or elsewhere within Albania to which he replied that he could not because of his fear of the network. Again this was treated as "speculative" and that they would not necessarily be aware of his return to Albania or have means to trace him on his return. It was considered that internal relocation was a viable option for the applicant. He could speak Albanian, English, Italian and Spanish and had spent over 17 years in Albania. It was felt that he had strong social and cultural ties with Albania which would assist during any relocation process. His work history and education was such that it was felt he could find employment on return to Albania to support himself. It was concluded overall that there was no reasonable degree of likelihood that he would be at risk of serious harm on return to Albania.

[39] The decision also considered the issue of the applicant's Article 8 entitlements. It was confirmed that the Home Office had given due consideration to Article 8 of the ECHR on the applicant's behalf. Although the applicant claimed to have three cousins in the UK he had no contact with them and it was felt his circumstances did not meet the threshold for interference with Article 8 entitlements. He could not claim to have established a family life in the UK.

[40] It was not considered that there were exceptional circumstances which would justify granting the applicant's claim.

[41] As already indicated the decision also certified that the claim was clearly unfounded under section 94(1) of the Nationality, Immigration and Asylum Act 2002. As a consequence he is unable to appeal this decision whilst in the United Kingdom.

The further submissions on behalf of the applicant

[42] On 7 July 2016 the applicant's solicitor wrote to the respondent making further submissions on his behalf.

[43] I quote from the letter as follows:

> "Our client has recently alerted us to new evidence causing him to fear for his safety on return to Albania.
>
> Specifically, the dispute arose approximately ten years ago when Muslims from a neighbouring village attempted to kidnap our client's cousin and force her to marry into a Muslim family. They were targeted as

such because our client and his family belong to the rare Albanian Christian minority.

As a result of the challenge that was made by his father, uncle and grandfather at the time, his uncle was arrested and imprisoned. Our client asserted this type of behaviour has increased in recent times and is fuelled by the recent tensions with the increased radicalisation of Muslims in Albania.

As stated above our client has devoutly practised his Christianity whilst in Belfast attending a church choir in […] and regularly attending the weekly mass in […]. He was in touch with family members and as recently as last week, these criminal gangs called [AB's] mother and specifically threatened the family that if the sum of 10,000 million Albanian Leks were not paid, then [AB]'s younger brother would be hurt. Although the family has continued to receive threats from this gang over the past several months, the violent threats specifically targeting his younger sibling, which occurred only last Tuesday, the family are in fear of their lives and as a result they have not ventured out of the house. We are instructed that the family are making immediate plans to leave the country and travel to Greece. …

We submit that this young man is a practising Catholic who will be returned into a family dispute in Albania. Our client believes that the people to whom he now owes money may well be one and the same group with links to Muslim extremists ….

In summary the history of Christian client's family dispute with a family in the neighbouring Muslim village coupled with the increasing general tensions between Christians and radicalising Muslims in Albania mean that this vulnerable young man has a genuine fear for his safety if he is returned to Albania. Furthermore he has a family connection to the UK and right to private and family life under Article 8 of the European Convention on Human Rights.

Our client is a young adult who fled Albania still being a minor. He is very limited about the understanding of the complex areas of law which

> govern his status in the UK. Thus for the first time, he has revealed to us that he has a British citizen cousin living in [..]. This cousin […] (DOB …) is married with a young family and has been in touch with our client throughout his entire stay in the UK. He lives at […..].
>
> Furthermore [AB's cousin] is able to corroborate the new piece of evidence surrounding the dispute.
>
> [AB's cousin] is also prepared to act as a surety for the purpose of our client's release."

[44] The letter was accompanied by copies of prayer books given to him by the staff at the children's home where he first attended and also a print out of various messages of support and also various Christian images which were taken from the applicant's bedroom wall.

[45] The submission also included an article dated 15 June 2016 written by a correspondent of the Washington Post corroborating the fact that ISIS had emerged in Albania.

The impugned decision

[46] The respondent replied to the submissions made on behalf of the applicant to which I have referred above on 10 July 2016. The key paragraphs in that decision are as follows:

> "11. Turning to your latest submissions, it is clear that the issues you are raising now on behalf of your client have already been considered by the Home Office previously. Nevertheless having had regard for those submissions and we find that although your client has stated that his family was allegedly threatened recently, he failed to provide any evidence to corroborate these claims. If we are to believe that indirect threats were received, we note that these threats were aimed at a younger sibling, who lives in Albania and not at your client. Furthermore no evidence has been provided to show that the local authorities in Albania will not be able to offer your clients sufficient protection should the need arise once he returns to his home country."

[47] The letter deals with the issue of the applicant's cousin which is asserted to be contradictory to his previous statement and that he had failed to provide any

evidence which substantiated that regular contact existed, which in itself, would be considered substantial enough to qualify him for a grant of leave in the United Kingdom outside of the rules.

[48] Overall it was considered that the supporting evidence provided was insufficient to advance the case any further or which would justify overturning the previous decision to refuse and certify the applicant's asylum claim.

[49] The decision-maker considered the timing of the latest submissions were of some significance and the suggestion was that the sole purpose in raising them so late in the removal process was to frustrate the process and prolong the applicant's stay in the United Kingdom. The applicant's submissions were therefore rejected.

[50] Reference is then made to the decision in ZT (Kosovo) v SSHD [2009] UKHL 6 indicating that the respondent must apply Rule 353 of the Immigration Rules. It then sets out the content of the rule. Reference is made to subsequent authorities in relation to the approach and the requirement of the Secretary of State to give anxious scrutiny to the question of whether further submissions would create a realistic prospect of success before an immigration judge. It was finally concluded that "taking everything into consideration together with the further representation submitted in the most recent correspondence, it is concluded that, your client's claim does not have a realistic prospect of success before an immigration judge".

The Legal Framework

[51] The relevant legal framework is not in dispute and has been set out in a number of judgments by Maguire J dealing specifically with the proper approach to cases involving consideration of Rule 353 of the Immigration Rules.

[52] In particular these have been set out in the case of Re Jahany's Application [2016] NIQB 35.

[53] The key portions of this judgment dealing with the legal framework are contained at paragraphs [12] to [18]. These state as follows:

> "[12] It is not in dispute between the parties that the applicant's submissions sent by his solicitor to the Home Office fell to be considered in accordance with Rule 353 of the Immigration Rules. This Rule states as follows:
>
> > 'When a human rights or asylum claim has been refused or withdrawn or treated as withdrawn…and any appeal relating to that claim is no longer pending, the decision maker will

> consider any further submissions and, if rejected, will then determine whether they amount to a fresh claim. The submissions will amount to a fresh claim if they are significantly different from the material which has previously been considered. The submissions will only be significantly different if the content:
>
> (i) had not already been considered; and
>
> (ii) taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection".

[13] The correct way for the decision maker to address rule 353 has been the subject of considerable judicial guidance. A commonly cited passage is that found at paragraph 6 *et seq* of the court's judgment in WM (Democratic Republic of Congo) v SSHD; AR (Afghanistan) v SSHD [2006] EWCA Civ 1495:

> '6… [The Secretary of State] has to consider the new material together with the old and make two judgments. First, whether the new material is significantly different from that already submitted, on the basis of which the asylum claim has failed…If the material is not "significantly different" the Secretary of State has to go no further. Second, if the material is significantly different, the Secretary of State has to consider whether it, taken together with the material previously considered, creates a realistic prospect of success in a further asylum claim. That second judgment will involve not only judging the reliability of the new material, but also judging the outcome of tribunal proceedings based on that material. …the Secretary of State in assessing the

> reliability of the new material, can of course have in mind where that is relevantly probative, any finding as to honesty or reliability of the applicant that was made by the previous adjudicator. However, he must also bear in mind that the latter may be of little relevance when…the new material does not emanate from the applicant himself, and thus cannot be said to be automatically suspect because it comes from a tainted source.
>
> 7. The rule only imposes a somewhat modest test that the application has to meet before it becomes a fresh claim. First, the question is whether there is a realistic prospect of success in an application before the adjudicator, but not more than that. Second…the adjudicator himself does not have to achieve certainty, but only to think that there is a real risk of the applicant being persecuted on return. Third, and importantly, since asylum is in issue the consideration of all the decision makers, the Secretary of State, the adjudicator and the court, must be informed by the anxious scrutiny of the material that is axiomatic in decisions that if made incorrectly may lead to the applicant's exposure to persecution.'

[14] The approach of the court on review of such a decision was described in the same authority as follows:

> 'First, has the Secretary of State asked himself the correct question? The question is not whether the Secretary of State himself thinks that the new claim is a good one or should succeed, but whether there is a realistic prospect of an adjudicator, applying the rule of anxious scrutiny, thinking that the

> applicant will be exposed to a real risk of persecution on return…The Secretary of State of course can and no doubt logically should treat his own view of the merits as a starting point in the consideration of a question that is distinctly different from the exercise of the Secretary of State making up his own mind. Second, in addressing that question, both in respect of the evaluation of facts and in respect of the legal conclusions to be drawn from those facts, has the Secretary of State satisfied the requirement of anxious scrutiny? If the court cannot be satisfied that the answer to both of those questions is in the affirmative it will have to grant an application for review of the Secretary of State's decision".

The judicial review test

[15] At the hearing of the judicial review, there was some argument about what test the court should apply when determining the case as between what may be described the "Wednesbury" approach and what the court described as a "substitutional" approach, under which the court could substitute its view for that of the original decision maker. The case law historically had oscillated between the two but there was general agreement that the Wednesbury test is that which has been applied uniformly since the decision of the Court of Appeal of England and Wales in MN (Tanzania) v SSHD [2011] 2 AER 772. The court must therefore apply a rationality standard to the issue of the lawfulness of the conclusion reached by the decision maker in respect of whether the putative fresh claim in this case had a realistic prospect of success before a tribunal.

Realistic prospect of success

[16] The above phrase is referred to in various authorities. In AK (Afghanistan) v SSHD [2007] EWCA Civ 535 Toulson LJ (with whom Ward and Tuckey LJJ agreed) said that "a case which has no

reasonable prospect of success…is a case with no more than a fanciful prospect of success". Thus "reasonable prospect of success" means only more than a fanciful prospect of success.

[17] Another formulation is found in ST v SSHD [2012] EWHC 988 Admin where His Honour Judge Anthony Thornton QC, acting as a High Court Judge, said at paragraph [49]:

> 'In deciding whether the claim has a reasonable prospect of success, the decision maker must consider whether he or she considers that the claim has a reasonable prospect of persuading an immigration judge hearing an appeal to allow the appeal from the decision of the same decision maker who has just rejected the fresh representations or submissions.'

Anxious scrutiny

[18] The notion of anxious scrutiny has also been the subject of discussion in the case law. For example, in a recent case, R (Kakar) v SSHD [2015] EWHC 1479 Admin, Foskett J at paragraph [32] referred to ML (Nigeria) [2013] EWCA Civ. 844 in this connection. In that case Moses LJ said:

> 'Of all the hackneyed phrases in the law, few are more frequently deployed in the field of immigration and asylum claims than the requirement to use what is described as 'anxious scrutiny'. Indeed, so familiar and of so little illumination has the phrase become that Carnwath LJ in R (YH) v SSHD [2010] EWCA Civ. 116, between paragraphs [22] and [24], was driven to explain that which he had previously explained namely what it really means. He said that it underlines 'the very special human context in which such cases are brought, and the need for decisions to show by their reasoning that every factor which might

> tell in favour of an applicant has been properly taken into account'. It follows that there can be no confidence that that approach has been taken where a tribunal of fact plainly appears to have taken into account those factors which ought not to have been taken into account'."

Summary of the arguments

[54] The applicant submits succinctly that the further submissions do amount to a fresh claim as they refer to a significant threat against his family in the context of the broader issue of sectarian violence. As such it is argued that the contents are significantly different from the material that had previously been considered. Furthermore they create a realistic – more than a fanciful – prospect of success in the Immigration Tribunal, especially in light of the newly available evidence and the respondent's country of origin guidance.

[55] The respondent argues that the issue of the applicant's safety and his fear of persecution were already considered and rejected in the decision of 9 October 2015. In the impugned decision it was considered that in relation to the applicant's suggestion that his family had been threatened recently he failed to provide any evidence to corroborate these claims. In any event the indirect threats were aimed at the applicant's younger sibling and not the applicant.

[56] It was also pointed out that the sufficiency of protection within Albania had been specifically considered in the October 2015 decision and that there was nothing new presented to contravene these determinations. The respondent therefore disputed that the further submissions were "significantly different from the material that has previously been considered" and that they did not amount to a fresh claim.

[57] It was submitted that it was clear from the decision letter which has been challenged that the respondent did give anxious scrutiny to the question of whether the further submissions would create a realistic prospect of success before an immigration judge. The decision-maker had asked the right question and the decision under challenge was not unreasonable or irrational.

Conclusion

[58] Is the decision of 10 July 2016 susceptible to challenge on public law grounds?

[59] The SSHD has rejected the "new submissions" from the applicant. The court must therefore focus on the determination that the new submissions did not amount to a "fresh claim". Are these submissions "significantly different" from the material which has previously been considered?

[60] In my assessment it is clear that the contents had not already been considered. The reference to the threats from criminal gangs to the applicant's family was new. The context in which these threats were originally made was also new namely a conflict between a Muslim gang and the applicant's Christian family. The assertion concerning the increased radicalisation of Muslims in Albania and the link to the conflict between the Muslim gang and the applicant's family was new. The suggestion that the people to whom the applicant owes money may be related to the Muslim gang was new. The assertion that the applicant's family are making plans to leave the country was new.

[61] Therefore the suggestion in the decision of 10 July 2016 that "it is clear that the issues you are raising now on behalf of your client have already been considered by the Home Office previously" is plainly wrong.

[62] Does this new material taken together with the previously considered material, create a realistic prospect of success, notwithstanding its rejection? As the authorities make clear the test for an applicant in these circumstances is "a modest one". A reasonable prospect of success means "only more than a fanciful prospect of success".

[63] In deciding whether this test is met the Secretary of State must satisfy the requirement of "anxious scrutiny". Such an approach is necessary given "the very special human context in which such cases are brought, and the need for decisions to show by their reasoning that every factor which might tell in favour of an applicant has been properly taken into account".

[64] In this regard it appears that the decision-maker came to the view that the applicant "failed to provide any evidence to corroborate these claims". It is suggested that "indirect threats" were received.

[65] The decision-maker baldly asserts that "it is concluded that, your client's claim does not have a realistic prospect of success before an Immigration Judge".

[66] The only reasoning in relation to the new material to which I have referred is set out in paragraph 11 of the letter.

[67] I am concerned that the new submissions have been unfairly characterised in the impugned decision. I do not see that the threats could be referred to as "indirect". There were specific threats to the family which allegedly have continued. Furthermore in apparently basing the rejection of the submissions on lack of corroboration it seems to me the decision-maker has precluded the reasonable prospect of an Immigration Judge hearing an appeal that he is satisfied that the assertions made are true. Corroboration of the threats would certainly be of assistance in terms of coming to a conclusion on the matter but it could not be said

that it was "fanciful" that a Tribunal Judge could accept the evidence of the applicant.

[68] Indeed the benefit of an appeal before a Tribunal Judge is that he or she will be able to undertake a detailed and rigorous level of inquiry in the course of an oral hearing with examination and cross-examination conducted by experienced advocates.

[69] In the court's opinion the evidence of the applicant is capable of being relied upon in support of his assertion that there is "real risk" of persecution should he be returned to Albania. The court must not substitute its own opinion for that of the decision-maker but applying the principles to which I have referred the decision-maker has not demonstrated an application of the anxious scrutiny required in relation to this decision. The new submissions have been too readily dismissed both in terms of whether the content is new and whether they would be sufficient taken together with the previously submitted material, to create a reasonable prospect of success before a tribunal.

[70] Accordingly I have come to the conclusion that the applicant is entitled to judicial review of the decision of the respondent dated 10 July 2016.

[71] I have come to the conclusion that it is appropriate to quash the decision of the respondent and that the further submissions of the applicant dated 7 July 2016 do amount to a fresh claim under Rule 353 of the Immigration Rules.

[72] I add that the decision by the respondent to reject a claim based on Article 8 of the ECHR could not be viewed as either irrational or as offending against the standard of Wednesbury unreasonableness. Whist I consider the contents of the submissions in this regard were not previously considered the respondent was clearly entitled to come to the conclusion that any Article 8 entitlements would not be considered substantial enough to qualify the applicant for a grant of leave to remain in the United Kingdom or constitute a fresh claim.

[73] When the Order 53 statement was drafted in this matter the applicant was subject to an imminent removal order. Subsequent to the issuing of the proceedings the removal directions were deferred and the applicant has continued to reside in this jurisdiction. In light of the change to his circumstances since the proceedings were lodged I propose to hear the parties further on the question of remedy.