



Neutral Citation Number: [2026] EWCA Civ 1132

Case No: CA-2026-000370

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM
UPPER TRIBUNAL JUDGE PINDER
JR-2025-LON-002318

Date: 26/08/2026

Before :

LORD JUSTICE PETER JACKSON
LORD JUSTICE STUART-SMITH
and
LADY JUSTICE WHIPPLE

Between :

R (on the application of MB)

Respondent

- and -

Secretary of State for the Home Department

Appellant

Alan Payne KC and Michael Biggs (instructed by **Government Legal Department**) for the
Appellant

Victoria Laughton and Priya Solanki (instructed by **Milestone Solicitors Ltd**) for the
Respondent

Hearing date: 22 July 2026

Approved Judgment

This judgment was handed down remotely at 2pm on 26 August 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice Whipple:

Introduction

1. This appeal is from two connected decisions of the Upper Tribunal Immigration and Asylum Chamber (Upper Tribunal Judge Pinder, the judge). By the first decision on 18 December 2025, the judge granted judicial review of the Secretary of State's decision dated 6 November 2024 to certify MB's claims for protection and human rights as clearly unfounded. By the second decision on 3 February 2026 and the order of the same date, the judge ordered the Secretary of State to take all necessary steps to allow MB to return to the United Kingdom. On 23 February 2026, Elisabeth Laing LJ granted the Secretary of State permission to appeal against both decisions and imposed a stay of execution pending the outcome of the appeal.
2. MB is an Albanian man in his mid-20s. He was trafficked to the United Kingdom and forced by his traffickers to work on a cannabis farm. The farm was raided by police, leading to MB being arrested and ultimately convicted of drug offences, following which he was sentenced to a term of imprisonment of 16 months. The Secretary of State deported him back to Albania at the end of his sentence. The issue raised on this appeal is whether the judge was right to hold that the Secretary of State had been in error when certifying MB's claim as clearly unfounded and, if she was in error, whether MB should now be permitted to return to the United Kingdom for his appeal.
3. I shall set out the legislative framework, summarise MB's case as it stood before the Secretary of State, consider the Secretary of State's decision letter (in some detail) and then look at the judge's conclusions about that decision letter. I shall then turn to the grounds of appeal and submissions in order to determine this appeal.

Statutory Framework

4. Section 94 of the Nationality, Immigration and Asylum Act 2002 (as amended) provides as follows:

“94. Certification of human rights or protection claims as unfounded or removal to safe country

- (1) The Secretary of State may certify a protection claim or human rights claim as clearly unfounded.
- (3) If the Secretary of State is satisfied that a claimant is entitled to reside in a State listed in subsection (4) he shall certify the claim under subsection (1) unless satisfied that it is not clearly unfounded.
- (3A) A person may not bring an appeal under section 82 against a decision if the claim to which the decision relates has been certified under subsection (1).
- (4) The States are –

...

(k) the Republic of Albania,

...”

5. Since 28 June 2022, the consequence of certification under section 94(1) has been to remove any right of appeal (by operation of section 94(3A), inserted by the Nationality and Borders Act 2022).

Background Facts

6. MB is an Albanian national born on 26 December 1993. He arrived in the United Kingdom in August 2023 when he was aged 29. He was subsequently recognised by the Secretary of State as a victim of modern slavery. The circumstances of his trafficking were set out by the judge at [6] of the first decision:

- “(a) Prior to leaving Albania, [MB] had accumulated a sizeable gambling debt and as a result of his inability to pay this back, he feared for his safety. He responded to an advert offering work abroad, and he was told that he would be assisted to travel to the UK in order to work. He travelled to Greece by bus and then to Amsterdam by plane. Although he had been told he would travel to the UK from Amsterdam by plane, he was told when in Amsterdam that he would be travelling by boat. When he objected he was threatened.
- (b) When [MB] arrived in the UK, he was taken by car to a house in Rotherham, where cannabis was being produced. When [MB] understood that he was to work in a cannabis factory, he objected, but again he was threatened, and told he had a large debt to pay. He was given precise instructions how to look after the cannabis plants.
- (c) On 8th December 2023, the house was attacked by a group of men, and [MB] was threatened with a machete. The police arrived shortly thereafter and arrested [MB] on suspicion of production of a controlled Class B drug – cannabis.
- (d) On 11th December 2023, a referral into the National Referral Mechanism (‘NRM’) was made (by the police) as [MB] stated that he was the victim of trafficking.”

7. On 18 December 2023, a positive Reasonable Grounds decision was made on the NRM referral. On 9 January 2024, MB was convicted of production of class B drugs and sentenced to a period of one year and four months’ imprisonment. On 23 January 2024, MB claimed asylum and attended his screening interview with the Secretary of State. As a result of his criminal conviction, on 7 February 2024 the Secretary of State issued

a Notice of Decision to deport MB from the UK. On 5 April 2024, a Conclusive Grounds decision was made by the Competent Authority, following the referral to the NRM, recognising MB as a victim of modern slavery. In their minutes to the decision, the Competent Authority referred to the criminal judge's sentencing remarks which included a finding that MB "had some awareness of the scale of the operation. But it was also a limited role under direction and there was an element of exploitation" ... "(t)here are some elements of coercion". MB was sentenced on the basis that his offending fell somewhere between significant and lesser role under the applicable Sentencing Council guideline.

8. On 5 July 2024, MB was released from prison. The Court was told that he went to live with his sister who was lawfully in the United Kingdom at that time. On 9 July 2024, the Secretary of State refused MB leave to remain under the Immigration Rules. On 6 November 2024, the Secretary of State refused MB's protection and human rights claims and certified them as clearly unfounded. On the same date, she signed a deportation order against MB. On 17 December 2024, MB was detained with a view to deportation. He was unsuccessful in his attempts to obtain interim relief to stay his removal. He was deported to Albania. The Court has no information as to his circumstances since he has been there.

MB's Claim for Protection

9. The details of MB's claim for protection are contained in his witness statement dated 15 February 2024 and his asylum interview dated 24 April 2024. In his witness statement, he said that his parents are still alive and living in Albania. He had studied mechanical engineering at university but had dropped out after the second year. He started to have gambling problems in his early 20s and got into debt. By mid-2023 he owed £11,000 to a man called Artur who threatened to harm him unless he repaid the money. People went to his parents' house; his father was very angry. MB wanted to leave Albania and saw an advertisement for work abroad and he got in touch with the contact called Arben who said his organisation operated in Holland and the United Kingdom and it was a powerful organisation with strong links to the Albanian government. He said the journey to the United Kingdom would cost €25,000, but MB could work for them for 5-6 months and clear the debt that way. MB decided to go. He travelled via Greece to Holland. He followed instructions and got to a house where there were other Albanians. They were told they would cross by boat that night. The driver called the person driving the boat "Thony". When they arrived on shore in the United Kingdom, a car was waiting for them. MB was driven to another house which turned out to be a cannabis factory. MB argued with the man who was there and said he had been promised a proper job; but the man said this was his job and threatened him and said he owed them a lot of money. The man said MB had to work there until December. He threatened MB saying that the organisation had strong links to people in powerful positions. He said that MB would be killed if he did not pay the debt or work for them until the debt was cleared. MB worked there looking after the plants. On the day he was arrested, 10 people broke into the house armed with machetes. Then the police came. The police arrested him. He could not now go back to Albania because he will be trafficked again and the chances are he would agree to that because he has no other options; he will either be trafficked or killed because the organisation who trafficked him is very powerful and they are well connected in Albania as well as having a network abroad. The Albanian police will not help him because they are corrupt and

he cannot pay them. His life will be at risk. He needs help with his mental health and gambling addiction.

10. In his asylum interview, MB gave a similar account. He said he was afraid of the people to whom he owed money. He named Artur and Arben, specifically. He had not asked the Albanian authorities for protection because Artur and Arben are powerful people and going to the police would make matters worse. He did not have the money to pay the police who only help powerful people. Artur and Arben are known to be people with lots of money and are powerful. He had realised in Holland that Arben was involved in illegal stuff. He had met them both in Tirana. But Albania was a small country where everyone is related to each other and it would not be possible to avoid them by moving to somewhere other than Tirana. He had had no contact with either Artur or Arben since being in the United Kingdom; his last contact had been while he was in Albania. His father had thrown him out once he found out about the gambling debts and these men had not contacted his family since he had been in the United Kingdom. Because Albania is a small country, they would know if he went back to Albania and he would be re-trafficked or something worse would happen. He could not relocate to another part of Albania to be safe. Artur had passed the debt onto others who are bigger fish. They used violence to get the money back. His family and relatives were aware of the gambling but would not help him; he has received help since he has been in prison where he had received “a hundred times more help” than he would have got in Albania. His relationship with Arben went sour once he got to Holland.

Secretary of State’s Decision

Reasons for refusing MB’s Claims

11. The decision letter is dated 6 November 2024 and runs to around 20 pages. MB’s protection claim was considered first. The letter noted that MB had been found by the Competent Authority to be a victim of modern slavery. It recorded that MB feared he would be killed by Arben or Artur because he had borrowed money from Artur to fund his gambling addiction and had borrowed from Arben to fund his travels to the UK. The writer had had regard to evidence from and representations on behalf of MB, as well as the relevant country policy and information notes (CPINs) specifically on Albania: *Actors of Protection v 2*, December 2022; *Human Trafficking*, v 16, July 2024; and *Medical and Healthcare Provisions v 3*, May 2023. The asylum claim had been considered at its highest, assuming that the events described by MB had happened as he described. The test to apply was whether MB’s fear for his own life was objectively well-founded, and if it was, that protection was not available from the authorities or that the authorities were unable or unwilling to afford protection and there was no other part of Albania to which he could safely relocate.
12. The writer concluded that any subjective fear MB may have of returning to Albania was not objectively well-founded. MB feared Artur and Arben but had not been in contact with either since leaving Albania in July 2023; he had failed to demonstrate that the people he feared had the ongoing motivation to harm him, noting that he had received no threats since leaving Albania. He had not demonstrated that the men have any power or influence over the authorities in Albania. He had not demonstrated that he could not safely relocate to another part of Albania. There was no real risk of re-trafficking on return because he was not living in poverty in Albania. Rather, he was educated up to university level; he was not of an age that was considered more

vulnerable to re-trafficking; he had family in Albania with whom he was in contact and who could support him on return; and he had previous experience working in hospitality and call centres. On account of his “individual circumstances” he was not at risk of re-trafficking.

13. The writer considered whether protection was available from the state or any party or organisation, in relation to his fear that Artur or Arben would kill him. Reference was made to *Horvath* (to which I shall come), noting that the standard to be applied when assessing sufficiency of protection is not to eliminate all risk amounting to a guarantee of protection but is a practical standard which takes account of the duty the state owes to all its nationals. The writer recorded that the Albanian authorities are in general willing and able to provide effective protection from non-state actors. With regard to trafficking, the authorities had increased the support and protection available to victims of trafficking; and there were NGOs which provided support and shelter to victims of trafficking. Laws had been introduced to combat corruption in the police and judiciary. There is an established police force from which MB could seek protection. MB had not established that there was any systemic failure of state protection and the authorities in Albania were in general able to provide protection to the *Horvath* standard. MB had not been able to provide any reasonable explanation for not seeking protection from Artur while in Albania or why such protection would not be available if he was returned there. He had speculated that the police would not protect him but he had never previously sought protection and had not produced evidence that protection would not be available. MB had had no contact with Arben since leaving Albania and had failed to show that Arben was motivated to harm him. There was no evidence to show that either of them had influence over the state; and based on the individual facts of MB’s claim, the writer’s conclusion was that state protection would be available to him.
14. The writer considered internal relocation. MB had not previously attempted to relocate. His claim that Albania was small and people would find about him was speculative. MB had failed to demonstrate that Artur or Arben had power or influence to locate him. He had had no contact with either man since 2023. With regard to the fact that MB was a victim of trafficking, there was evidence to show that there were effective safeguards against male victims of trafficking being detected while living in accommodation provided by a particular non-profit organisation. The writer concluded that it was reasonable to expect MB to relocate to another part of Albania. He has family in Tirana with whom he is in contact; he speaks the language; he had lived in Albania for the majority of his life and was familiar with cultural and societal norms; he was educated and had worked in the past. In line with *Januzi* (to which I shall come) it was reasonable to expect him to relocate internally.
15. The writer considered and rejected MB’s claim for humanitarian protection. The writer did not consider that there was any basis for granting discretionary leave. His claim under the Convention was also rejected: his deportation was conducive to the public good within the Immigration Rules because he had been sentenced to a term of imprisonment exceeding 12 months. He had no children or partner in the United Kingdom and he did not meet the private life exception. There might be some practical difficulties and uncertainties in returning to Albania, but there were no very significant obstacles to integration. There were no very compelling circumstances why MB should not be deported. To the contrary, there was a significant public interest in deporting him and his private life in the United Kingdom was limited to his sister who was living

in the United Kingdom while the rest of his family was in Albania. The writer considered whether there was a medical claim because he claimed to suffer from Hepatitis B and had mental health issues. But adequate treatment was available in Albania and removal would not breach Articles 3 and/or 8.

Certification

16. Then the writer came to the certification decision which is the subject of this appeal. The writer said that:

“In the case of your claim, I have concluded that it is so wholly lacking in substance that an appeal would be bound to fail, and it is certified under section 94(1) of the [2002 Act] that your claim is clearly unfounded.”

17. The writer gave reasons for that conclusion. First, consideration was given to why MB’s protection claim was clearly unfounded. The writer said that claim was bound to fail, citing *FR (Albania)* (to which I shall come). The writer said that MB had failed to demonstrate that Artur or Arben had the motivation or capability to locate and harm him, or that they had any power or influence over the authorities in Albania which would prevent MB seeking protection. Further, there was sufficient protection within Albania, which protection was available in light of the “objective information in the above sections” of the letter. Further, MB had failed to provide a reasonable explanation as to why he could not relocate internally, or why relocation would be unduly harsh in light of his personal circumstances “given the consideration in the above sections”. The letter went on:

“For these reasons it is considered that your claim cannot succeed on any legitimate view and any immigration judge, properly directing him or herself and applying the law to the facts and the same evidence, would inevitably conclude the same. Therefore, your claim that your removal from the UK would breach the UK’s obligations under the Refugee Convention/eligibility for humanitarian protection is wholly lacking in substance and any appeal would be bound to fail.”

The writer gave reasons why MB’s human rights claim was clearly unfounded, which echoed the conclusions the writer had already reached in relation to that claim, which was “bound to fail”.

Upper Tribunal Decision

18. MB lodged a judicial review claim form which was issued on 15 January 2025. He challenged the Secretary of State’s certification as irrational. Specifically, he argued that the Secretary of State had failed to consider whether MB’s claims based on being a victim of trafficking were clearly unfounded. He also challenged his detention as unlawful. The Secretary of State disputed the claim. Permission was refused on the papers but was granted on the first ground only (relating to certification) following an oral hearing on 24 June 2025. The substantive judicial review was heard on 4 November 2025; both parties were represented by counsel at that hearing. This led to the judge’s first decision dated 18 December 2025.

19. At [21] of the first decision, the judge set out in full the Secretary of State's reasons for certifying MB's protection and human rights claims, extracted from the decision letter. She considered relevant case law and relevant country guidance and background information. She dismissed the Secretary of State's submission that the appeal was academic (based on the fact that MB had, by this time, been deported). She noted that the focus of MB's challenge, via his counsel, was the re-trafficking aspect of MB's claim. The judge was concerned that the Secretary of State had minimised the circumstances in which MB was trafficked, see [49], although she appeared to accept the Secretary of State's submission that the framing of the question did not disclose a public law error, see [50]. She held that the Secretary of State had "limited her consideration of whether or not [MB's] protection claim should be certified as clearly unfounded to her reasons for substantively rejecting the basis of [MB's] claim", and said: "As is clear from the summary of the legal framework and applicable case law above, both considerations – the certificate and the substantive consideration of a claim – require different considerations", see [51].
20. She concluded that the Secretary of State had failed to take into consideration various factors, including (i) that MB had been accepted as a victim of trafficking for the specific purpose of forced criminality; (ii) that an immigration judge could rationally find that the traffickers had been able to evade detection or prevent MB from seeking protection in Albania; (iii) that the Competent Authority had itself noted that modern slavery occurs in Albania and had occurred in MB's case; (iv) the prudence of accepting that a past victim of trafficking was more likely to be at risk of re-trafficking, in the same way as past persecution would be regarded as a serious indication of a well-founded fear of future persecution.
21. The judge concluded:

“55. From the above and the passages in the refusal decision where the Respondent addresses the issue of sufficiency of protection, I am satisfied that the Respondent has failed to ask herself whether or not the Applicant's claim – that there would not be sufficiency of protection as a result of his own particular circumstances, which include his vulnerabilities as a victim of trafficking – is one that is bound to fail. The reasons for refusing the Applicant's claim on the grounds of sufficiency of protection are grounded in the Respondent's assessment, from the information collated in her Country Policy Information Note on Albania that in general there is sufficiency of protection and the Applicant has not demonstrated the power and/or influence of his past traffickers. Those reasons are then imported into the Respondent's assessment on certification – she does not add any further reason with reference to the applicable test.

56. On this basis, I am satisfied that the Respondent has failed to ask herself the correct question. Whilst the correct test and authority are referred to at the start of the Respondent's decision to certify, I am satisfied that she has failed to apply this to the particular facts of the Applicant's claim. The fact that the Applicant has been trafficked already from Albania demonstrates that his claim that the traffickers have power and

influence over authorities is not fanciful. Neither is it fanciful of the Applicant to suggest that the general assessment may not apply to him or may not be sufficient.

...

58. The Respondent is entitled to conclude based on the CPIN that there would be sufficiency of protection in general to enable the Applicant to avoid a risk on return to Albania when refusing the Applicant's claims and to reject the Applicant's protection claim on that basis. I am satisfied however that the Respondent has failed to ask herself when seeking to certify the claim whether or not a judge, properly directing themselves to the evidence available, could reach a different view."

22. In developing her reasons, she noted that even a generally effective legal and criminal justice and enforcement system may have gaps; and the question was whether MB's claim that there would not, in his case, be sufficiency of protection, was fanciful or bound to fail ([61]). She said that the Secretary of State had not applied her mind to the question whether MB would be able to access protection ([64]). She also thought that the Secretary of State's view that MB could internally relocate was not the right question to have asked herself when certifying MB's claim. She concluded:

"67. [...]Is the Applicant's claim - that he could not relocate as a result of the power and influence held by his past traffickers and/or as a result of his own particular vulnerabilities and needs – capable of belief? Yes. Has the Respondent asked herself this when certifying the Applicant's claim? No, she has not."

The only correct conclusion was that MB's claims were not bound to fail [71].

23. The parties were unable to reach agreement on the appropriate remedy, so the matter came back before the judge on 3 February 2026 when the judge ordered the Secretary of State to take all necessary steps to allow MB to return to the United Kingdom.

Grounds of Appeal and Respondent's Notice

24. The Secretary of State appeals on three grounds:

- "1. The Upper Tribunal was wrong to hold that the appellant applied the wrong test when making certificates pursuant to section 94 of the Nationality, Immigration and Asylum Act 2002 in respect of the respondent's claims on 6 November 2024.
2. The Upper Tribunal was wrong to hold that the respondent's protection and human rights claims were not bound to fail, and so wrongly held that those claims were not correctly and lawfully certified pursuant to section 94 of the Nationality, Immigration and Asylum Act 2002.

3. The Upper Tribunal was wrong to make a mandatory order in the terms set out at paragraph (2) of the order of 3 February 2026 or at all and/or applied the wrong principles and/or failed to properly consider all material matters when deciding whether it was appropriate to make such an order.”
25. By his Respondent’s Notice, MB invited the Court to uphold the judge’s second decision on the additional basis that although the mandatory order was a lawful exercise of the judge’s discretion, in addition MB’s removal was unlawful which is a relevant factor in the assessment of discretion.
26. For this appeal, the Secretary of State was represented by Alan Payne KC (who was new to the case) leading Mr Biggs (who had conduct of the case below). MB is represented by Victoria Laughton and Priya Solanki, both of whom are freshly instructed on appeal. I am very grateful to all counsel, and their respective teams of instructing solicitors, for their assistance in this appeal.

Legal Principles

27. There is little dispute about the applicable legal principles. What follows is a summary of the key points.

Certification Test

28. The test is whether MB’s claims for protection or under the Convention were “bound to fail”. That phrase comes from *R v Secretary of State for the Home Department ex parte Thangarasa and Yogathas* [2002] 3 WLR 1276 at [34]. Similar formulations are found elsewhere in the cases, for example, in *R (L) v Secretary of State for the Home Department* [2003] 1 WLR 1230, where Lord Phillips said at [58]: “*If, on at least one legitimate view of the facts or the law the claimant may succeed, the claim will not be clearly unfounded*”. For present purposes, I adopt the “bound to fail” formulation which was common ground between the parties.
29. The Secretary of State’s focus – and in turn the tribunal or court’s focus - must be on the *quality* of the claim. This was emphasised in *FR (Albania)* [2016] EWCA Civ 605, a case involving two Albanians whose asylum claims had been certified by the Secretary of State. Beatson LJ (with whom the other members of the Court agreed) put it this way:

“74. ... There must be careful consideration of the factual substance and detail of the claim put forward by the claimant and material relied upon by him or her in support, and the import of the body of objective evidence accumulated in relation to the state in question. In the words of Lord Hope in *ZT (Kosovo)* [2009] UKHL 6 at [52], the focus is on the “quality” of the claim. It is necessary to consider whether, in the round, the claim or some part of it is capable of belief and, if so, whether if believed in whole or in part it is capable of coming within the Refugee Convention or, as the case may be, the scope of the ECHR. The Secretary of State must consider what approach would be taken

by the First-tier Tribunal, properly directing itself as to the law and as to the facts on the evidence.”

That did not mean that the Secretary of State was required to accept the appellant’s case without question:

“77. [Counsel for the appellants’] submissions were elegantly presented. ... But at times she appeared to be submitting that anything said by a claimant should be accepted as correct for the purpose of the certification exercise or because further information might emerge at the hearing of an appeal. In my judgment, that puts it far too high. It would in practice prevent the certification of any claim, however incapable of belief or inconsistent with the objective evidence the account given by the claimant is. What must be assessed is the claim which has in fact been put forward, including the answers in interview and the contents of witness statements, the detail given and any supporting evidence submitted. To do otherwise is to let a genuine subjective fear be conclusive, whether or not it is objectively well-founded and regardless of what the objective evidence about a state is.

Separate consideration must be given to the decision on an application for asylum and the decision on certification ([96]). But the Secretary of State could have regard to her reasons for refusing the claims when deciding whether to certify it:

“99. There is nothing wrong in the certification decision relying implicitly, as these decisions do, on the reasons for refusing the application for asylum. ...”

30. In *SP (Albania) v Secretary of State for the Home Department* [2019] EWCA Civ 951, Ryder LJ (with whom the other members of the Court agreed) emphasised the point made in *FR (Albania)*, that taking an appellant’s case “at its highest” did not mean that everything the appellant claims must be taken to be correct ([24]); rather:

“25. The correct approach when considering a claim at its highest following *FR (Albania)* is to consider the claim that has in fact been put forward by the appellant including all the information she has provided. If there is material provided by the appellant, including her answers during interview, which is capable of being objectively well founded and sufficient to establish a claim but which is not accepted by the Secretary of State, then an opportunity to have that evidence tested before a judge of the First-tier Tribunal should be provided i.e. certification by the Secretary of State would not be appropriate.”

Sufficiency of Protection

31. The standard to be met by a home state was described in *Horvath v Secretary of State for the Home Department* [2001] 1 AC 489. Lord Hope, with whom Lords Browne-

Wilkinson and Hobhouse agreed, explained what sufficient protection against persecution in the person's country of origin meant:

"The standard to be applied is therefore not that which would eliminate all risk and would thus amount to a guarantee of protection in the home state. The standard to be applied is therefore not that which would eliminate all risk and would thus amount to a guarantee of protection in the home state. Rather it is a practical standard, which takes proper account of the duty which the state owes to all its own nationals. As Ward LJ said [in the Court of Appeal] at [2000] INLR 15, 44G, under reference to Professor Hathaway's observation in his book, at p 105, it is axiomatic that we live in an imperfect world. Certain levels of ill-treatment may still occur even if steps to prevent this are taken by the state to which we look for our protection. I consider that the Immigration Appeal Tribunal in this case applied the right standard when they were considering the evidence." (p 500 G-H).

Lord Clyde concurred in the result, expressing the test of sufficiency of protection in this way:

"It seems to me that the formulation presented by Stuart-Smith LJ in the Court of Appeal may well serve as a useful description of what is intended, where he said [2000] INLR 15, 26, para 22:

"in my judgment there must be in force in the country in question a criminal law which makes the violent attacks by the persecutors punishable by sentences commensurate with the gravity of the crimes. The victims as a class must not be exempt from the protection of the law. There must be a reasonable willingness by the law enforcement agencies, that is to say the police and courts, to detect, prosecute and punish offenders."

And in relation to the matter of unwillingness he pointed out that inefficiency and incompetence is not the same as unwillingness, that there may be various sound reasons why criminals may not be brought to justice, and that the corruption, sympathy or weakness of some individuals in the system of justice does not mean that the state is unwilling to afford protection. "It will require cogent evidence that the state which is able to afford protection is unwilling to do so, especially in the case of a democracy." The formulation does not claim to be exhaustive or comprehensive, but it seems to me to give helpful guidance." (p 511 A-C).

Internal Relocation

32. In *Januzi v Secretary of State for the Home Department* [2006] UKHL 5, [2006] 2 AC 426, Lord Bingham, with whom the other members of the Committee agreed, said at [21]:

“The decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so... There is, as Simon Brown LJ aptly observed in *Svazas v Secretary of State for the Home Department* [2002] 1 WLR 1891, para 55, a spectrum of cases. The decision-maker must do his best to decide, on such material as is available, where on the spectrum the particular case falls... All must depend on a fair assessment of the relevant facts.”

33. In *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49, [2008] AC 678, Lord Bingham (with whom the other members of the Committee agreed) explained the approach to internal relocation in this way at [5]:

“It is, or should be, evident that the inquiry must be directed to the situation of the particular applicant, whose age, gender, experience, health, skills and family ties may all be very relevant. There is no warrant for excluding, or giving priority to, consideration of the applicant’s way of life in the place of persecution. There is no warrant for excluding, or giving priority to, consideration of conditions generally prevailing in the home country. I do not underestimate the difficulty of making decisions in some cases. But the difficulty lies in applying the test, not in expressing it. The humanitarian object of the Refugee Convention is to secure a reasonable measure of protection for those with a well-founded fear of persecution in their home country or some part of it; it is not to procure a general levelling-up of living standards around the world, desirable though of course that is.”

The risk of re-trafficking

34. *TD and AD (Trafficked women)* CG [2016] UKUT 00092 concerns women being trafficked from Albania to the UK. The Upper Tribunal provided the following guidance, so far as material:

“d) In the past few years the Albanian government has made significant efforts to improve its response to trafficking. This includes widening the scope of legislation, publishing the Standard Operating Procedures, implementing an effective National Referral Mechanism, appointing a new Anti-trafficking Co-ordinator, and providing training to law enforcement officials. There is in general a *Horvath*-standard sufficiency of protection, but it will not be effective in every case. When considering whether or not there is a sufficiency of protection

for a victim of trafficking her particular circumstances must be considered.

e) There is now in place a reception and reintegration programme for victims of trafficking. Returning victims of trafficking are able to stay in a shelter on arrival, and in ‘heavy cases’ may be able to stay there for up to 2 years. During this initial period after return victims of trafficking are supported and protected. Unless the individual has particular vulnerabilities such as physical or mental health issues, this option cannot generally be said to be unreasonable; whether it is must be determined on a case by case basis.

...

g) Re-trafficking is a reality. Whether that risk exists for an individual claimant will turn in part on the factors that led to the initial trafficking, and on her personal circumstances, including her background, age, and her willingness and ability to seek help from the authorities. For a proportion of victims of trafficking, their situations may mean that they are especially vulnerable to re-trafficking, or being forced into other exploitative situations.

h) Trafficked women from Albania may well be members of a particular social ground on that account alone. Whether they are at risk of persecution on account of such membership and whether they will be able to access sufficiency of protection from the authorities will depend on their individual circumstances including but not limited to the following:

- 1) The social status and economic standing of her family
- 2) The level of education of the victim of trafficking or her family
- 3) The victim of trafficking’s state of health, particularly her mental health
- 4) The presence of an illegitimate child
- 5) The area of origin
- 6) Age
- 7) What support network will be available.”

It was common ground that we should have regard to this country guidance, with suitable adjustments, when considering the position of a man who had been trafficked from Albania.

35. In *R (TDT) v Secretary of State for the Home Department* [2018] EWCA Civ 1395, [2018] 1 WLR 4922, a case about Vietnamese victims of trafficking, Underhill LJ identified the particular risk that those who have already been trafficked will be trafficked again; see this at [40]:

“Trafficking is a process and not a single event. A victim of trafficking who is encountered in the back of a lorry or found

working at a cannabis farm or a nail bar will not only have been trafficked in the preceding period but will also be at real and immediate risk of the trafficking continuing; even if a victim has escaped, or been removed, from the immediate control of their traffickers, he or she will very commonly still be sufficiently under their influence to be at real and immediate risk of re-trafficking if not afforded proper support and protection.”

The situation in Albania

36. *AD v Sweden* (Application No 22283/21) is a recent decision of the European Court of Human Rights (7 August 2024). In the context of article 3 ill-treatment, the Court recognised that the fact of past ill-treatment can provide a strong indication of a future real risk of ill-treatment (see [66]). The Court was willing to assume that the appellant family, from Albania, might face a risk of ill-treatment from non-state actors if they were to return ([67]), but said this in relation to the sufficiency of state protection:

“69. The Court, however, recognises the challenges faced by the Albanian judicial system, which are described in the country information quoted above, and which were also noted by the Migration Agency and the Migration Court, as well as by the Government. In particular, the Court notes the reports of continuing problems relating to corruption and influence from criminal organisations. Essentially, from all the reports quoted above dating from 2021-2023 (see paragraphs 39-44 above), it appears that corruption continues to be a widespread problem in Albania and that further efforts are needed to address this. The report from the Belgian Office of the Commissioner General for Refugees and Stateless persons also specifically states that Albanian crime groups remain among the most powerful in all of Europe and that criminals from that ecosystem have ties to the police, judicial officials and other people in high positions (see paragraph 43 above). The report from the Swedish Migration Agency further states that the police have a history of corrupt elements facilitating or even participating in criminal activities (see paragraph 41 above).

70. Nevertheless, the Court also recognises that Albania, a member of the Council of Europe and a Contracting State to the Convention, has made concerted efforts to address these issues. The reports quoted above describe several reforms which have been introduced and measures taken to improve the capability and integrity of the law enforcement authorities. The reports also note that, although some problems remain, progress has been made. For example, specialised bodies working against corruption and organised crime have been set up and are operational, vetting processes for judges and prosecutors are ongoing, regular police operations against criminal organisations are carried out and there are examples of investigations, arrests and convictions in cases relating to corruption and to organised crime (see, in particular, paragraphs 39 and 41-44 above).

71. In the light of these recent reports, which postdate the decisions in the domestic proceedings, the Court considers that the Albanian authorities' capacity to protect their people cannot be regarded as insufficient for the general public in Albania. Nor can it be regarded as generally insufficient for all persons who are targeted by criminal organisations ..."

The Court went on to consider the particular circumstances of the applicants' cases ([72]), and found that the evidence submitted by the applicants did not show that the Albanian authorities had failed to provide sufficient protection ([75] and [76]). The Court concluded that "it has not been demonstrated that the Albanian authorities are unable or unwilling to obviate any risk of ill-treatment by non-State actors seemingly faced by the applicants by providing appropriate protection" ([78]).

37. The Secretary of State's Country Policy Information Note (CPIN) Albania: Human Trafficking concludes that "in general, male victims of trafficking are not at real risk of serious harm or persecution" (paragraph 3.3.1). That CPIN addressed the risk of re-trafficking at paragraph 3.3.4 (in a passage quoted at [33] of the first decision):

"3.3.4 In general, the available evidence does not indicate that men and boys who have been trafficked to the UK will be at risk of serious harm on return for that reason alone. Whether they face a risk of such treatment will depend on their personal circumstances, such as their age, education, skills and employability, area of origin, health or disability, availability of a support network, and the intent and reach of their traffickers."

Post-Script

38. Since this appeal was heard, the UT has produced country guidance on male victims of trafficking from Albania, highlighting the factors indicating a risk of re-trafficking, see *LR v Secretary of State for the Home Department* [2026] UKUT 00315 (IAC), at (6)-(9) of the headnote in particular. The various factors noted in *LR* as relevant to future risk were raised in submissions in this case and are addressed below, albeit in the context of pre-existing authority. It is not necessary to say anything further about *LR*, beyond noting it.

Grounds 1 and 2

Preliminary Points

39. Although Ms Laughton seeks to uphold the first decision in its entirety, there are certain aspects of that first decision which are difficult to defend. I address these as preliminary points, before I come to the main dispute in the appeal.
40. First, the judge said in her first decision that the Secretary of State did not ask herself the correct question or apply that test to the particular facts of MB's claim ([56]). But the Secretary of State asked herself, in terms, whether MB's claim was bound to fail. That is a formulation of the test which is commonly used and which has been considered and applied in many cases. The Secretary of State did, in my view, ask herself the correct question and at least purported to apply that test to MB's case.

41. Secondly, the judge said that the Secretary of State did not give separate consideration to the issue of certification ([51]). But it is plain from the detailed decision letter that the Secretary of State did give separate consideration to the issue of certification. That letter was structured, as I have noted above, to look first at the substantive claims; and then to consider certification as a separate exercise of judgment.
42. Third, the judge said that the Secretary of State was wrong to limit her consideration to her reasons for substantively rejecting MB's claim ([51]). But there is nothing wrong with the Secretary of State relying on her reasons for refusing the asylum or a human rights claim when it comes to the certification decision: that is clear from *FR (Albania)* at [99]. The Secretary of State was entitled to refer back to other sections of the letter in the section dealing with certification. Whether those reasons justified the conclusion that MB's claims were bound to fail is a separate issue which I shall come to.
43. Fourth, the judge said that the Secretary of State had failed to have sufficient regard to MB's history of having been trafficked and the risk of re-trafficking he would now face on return. But the Secretary of State's letter must be read as a whole and in it the author made repeated reference to the fact that MB had been a victim of trafficking: that fact was included in a detailed chronology set out at the start of the letter; it was referred to in the body of the letter a number of times; and the letter expressly addressed the risk of re-trafficking, against that history, in the following passage:

“It has also been considered whether you would face any risk on return to Albania as a victim of trafficking in line with the caselaw of *TD and AD (Trafficked women) CG [2016] UKUT 92 (IAC)*. There is no real risk of re-trafficking on return because you have not told us that that you were living in poverty in Albania, you are educated up to university level, and are not of an age that is considered more vulnerable to re-trafficking. You have family residing in Albania who you are in contact with and who will be able to support you on your return. You have previous experience working in hospitality and call centres. Therefore, it is considered that you would not be at risk of being re-trafficked due to your individual circumstances.” (p 6 of the letter.)

This passage picks up the points made in *TD and AD* (see above), which points are captured in paragraph 3.3.4 of the CPIN (see above). On a fair reading of the decision letter, the Secretary of State had not overlooked the fact that MB was a victim of trafficking (as the judge indicated, for example, at [52(a)] of the first decision); nor had she failed adequately to engage with the risk of being re-trafficked (as the judge indicated, for example, at [52(b)]). The fact of MB's past trafficking and the risk that he might be re-trafficked were expressly addressed in the letter.

Bound to Fail?

44. I come then to the real issue in this appeal, which is whether MB's claims were bound to fail. Although MB's case on paper was that the Secretary of State was wrong in relation to both the protection claim and the human rights claim, argument before the judge and before this Court has centred on MB's protection claim and the history of

having been trafficked by unscrupulous criminals operating in Albania. Although not formally conceded, Ms Laughton did not suggest that there was arguable merit in MB's human rights claim which I therefore leave to one side (as hopeless, or bound to fail).

45. MB's case before the judge was that his protection case was not bound to fail, given the risk of re-trafficking that he faced. The case advanced from the outset was that "the fact that [MB] has been trafficked is enough, as a matter of fact and perhaps in law, to render his claim not clearly unfounded" (see [58] of MB's grounds for judicial review). The judge agreed, referring to MB's "particular circumstances, which include his vulnerabilities as a victim of trafficking" ([55]) and concluding that the fact that MB had been trafficked already "demonstrated" that MB's claim that his traffickers "have power and influence over the authorities" was not fanciful; neither was it fanciful for MB to suggest that the general level of protection may not be sufficient in his case ([56]).
46. In this Court, Mr Payne challenged the judge's conclusion that MB was at risk of being re-trafficked. He submitted that the mere fact of having been trafficked in the past is insufficient, in and of itself, to demonstrate an arguable insufficiency of protection to the *Horvath* standard in the future or, alternatively, an arguable impossibility of internal relocation. He noted the country guidance in *TD and AD* which makes plain that the risk of re-trafficking depends on individual circumstances (and submitted that MB's personal circumstances included many protective factors identified in *TD and AD* – such as family links in Albania and a good standard of education). He noted that the risk identified in *TDT* was an immediate risk to those just trafficked, but MB was trafficked in 2023 and has been away from his traffickers for almost three years now, so that the situation in his case is quite different. Mr Payne argued that some evidence above and beyond the general was necessary to show that there was a cogent basis, specific to the individual, for concluding that MB would or might fall into a gap in state protection. He was able to call on two decided cases for examples of the sort of evidence the Court should be looking for. In *FR (Albania)*, which involved blood feuds in Albania, one appellant, KL, produced evidence that his father had killed another man, that his father had been shot and hospitalised, that his father was subsequently convicted of the killing of the other man, that a threat was made to the father's lawyer at the time of the trial, and there was some evidence of a kidnap plot relating to KL (see [89] of the judgment in that case). That had been sufficient to persuade the Court that his claims were not bound to fail. In *SP (Albania)*, the Court allowed the appeal because a threat that the appellant's children would be taken away had not been addressed by the Secretary of State and required investigation (see [27]-[28]). Mr Payne submitted that there was nothing equivalent in this case, no evidence or feature capable of displacing the objective evidence that there was sufficiency of protection and/or that MB could relocate internally. MB's case was subjective assertion; the Court had said that sort of case was insufficient in *FR (Albania)* (at [77]) and *SP (Albania)* (at [25]).
47. Ms Laughton seeks to uphold the judge's conclusion. She reminds the Court that this is an appeal from the decision of a specialist tribunal with which this Court should be slow to interfere (noting *AH (Sudan)* at [30]). MB's case should be taken at its highest and given anxious scrutiny. *TD and AD* shows that there are still risks for those who have been trafficked. *AD v Sweden* does not suggest that there is always sufficiency of protection in Albania; it recognises gaps and deficits for some. In this case, it would be open to a First-tier Tribunal to draw the inference that MB's trafficker, Arben, and

the network of which Arben formed part, was an international crime gang operating across borders with sophistication and an extensive reach; after all, Arben himself had said that his people had strong links to the Albanian government. That gang had evaded detection before, there was reason to think they might do so again. The evidence, taken as a whole, went beyond a mere subjective fear asserted by MB. Properly, the evidence showed (or might be found to show) an objectively well-founded fear of violence against MB or a risk of re-trafficking from which MB would not be adequately protected by the state. The traffickers might well be able to find him wherever he settled in Albania. The judge was right to say that the Secretary of State had failed to give proper weight to these concerns.

48. I start with the primary facts. MB is a man of 30 years old. His parents live in Tirana and he is in contact with them. He grew up in Albania. He speaks the language and knows its customs. He has a record of finding work in that country. He is well-educated although he never completed his degree. He is in reasonably good health, although he has in the past had mental health issues and a gambling addiction; he possibly has hepatitis B. The various factors listed in *TD and AD* and repeated in paragraph 3.3.4 of the CPIN are, generally, in his favour. Those factors were identified by the Secretary of State in the decision letter as a basis for refusing his protection claim and for certifying it.
49. MB was trafficked because he responded to an advert offering work in the UK, not because he was preyed on or targeted (beyond reading that advert) by traffickers. The same circumstances are unlikely to arise again, because he will know not to respond to such an advert again.
50. MB's last contact with his traffickers was on 8 December 2023; on that date the police raided the cannabis house and he was released from his traffickers. He was arrested and taken into custody where he remained until 5 July 2024 (on remand and thereafter as a convicted prisoner). In custody, he reports getting help for his drug addiction and other mental health problems. Between his release from custody and his detention on 17 December 2024, he lived with his sister in the UK. He has been back in Albania since 16 January 2025 and the Court was not told that he had encountered any difficulties since his return. I accept Mr Payne's submission that the concern of re-trafficking in cases like *TDT* relates to vulnerable women who have just been released from their traffickers and are at risk of immediate re-trafficking if they are not protected. That is not this case; it is almost three years since MB was trafficked and he has had no contact with his traffickers in the meanwhile.
51. Ms Laughton argues that his traffickers are, inferentially, part of a cross-border international network. So they may be. That must be true of most traffickers who extract vulnerable people from one state to traffic them to another country where they are forced to work as modern slaves. That feature does not mean that the home state will not or cannot provide sufficient protection, or that safety cannot be found by internal relocation. Further, because the international dimension is typical of people trafficking, it must have been in the minds of the UT in *TD and AD*, but still that case suggests that for many women victims of trafficking, return to Albania is safe.
52. In this case, MB's expressed fears relate to two people with whom he had contact before being trafficked to the UK. One was Artur, who had nothing to do with his trafficking but was a money lender who had exploited his addiction to gambling. The second was

Arben, who offered him the job abroad and arranged for his transit, but was not implicated in the subsequent sequence, from Holland onwards, when MB was exposed to threats and became aware that he was being trafficked. There is nothing, beyond MB's assertions of fear, to suggest that either man will try to locate MB. Even if MB could demonstrate some objective basis for his fear, there is nothing, beyond MB's subjective assertions, to demonstrate that the state will not or may not be able and willing to provide sufficient protection (on the *Horvath* standard). Alternatively, there is nothing, beyond MB's subjective assertion, to demonstrate that MB will not be able to escape any threat by relocating internally (applying *Januzi* and *AH (Sudan)*).

53. MB does not come close to showing that there might be a reason why, *in his case*, state protection would or might be insufficient and/or internal relocation would or might not protect him.
54. A tribunal judge faced with this protection claim would inevitably dismiss it. The quality of this claim (cf *ZT (Kosovo)* and *FR (Albania)*) is poor: there is no evidence, beyond subjective assertion, to support the claim; and there is a strong body of objective evidence and case law (both domestic and from the European Court of Human Rights) to counter it. The judge did not engage with the objective evidence; nor did she identify any specific aspect of the subjective evidence which might demonstrate a gap in state protection or lack of relocation possibilities. I respectfully disagree with the judge that any outcome other than dismissal by the First-tier Tribunal can realistically be envisaged. The Secretary of State succeeds on grounds 1 and 2.

Ground 3

55. In these circumstances, there is no need to consider the merits of ground 3, which only arises if the appeal is dismissed so that the issue of whether and if so how and when MB is to be returned to the United Kingdom becomes live. The matters raised by ground 3 are not straightforward – although they were well argued by Mr Biggs for the Secretary of State and Ms Laughton for MB. In my view, those matters are better left for determination in a case where they are material.

Conclusion

56. I would allow this appeal.

Lord Justice Stuart-Smith

57. I agree.

Lord Justice Peter Jackson

58. I also agree.