



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/03932/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Determination  
Promulgated**

**On 22 April 2014**

**Before**

**UPPER TRIBUNAL JUDGE DAWSON**

**Between**

**D A**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr B Lams instructed by Kilby Jones Solicitors

For the Respondent: Mr T Melvin, Senior Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, a national of Albania born 1986 appeals with permission the decision of First-tier Tribunal Judge Whalan who dismissed the appeal against the decision dated 10 April 2013 to remove her as an illegal entrant for reasons given in a determination that followed a hearing on 24 May 2013.

2. An anonymity order made by the first-tier tribunal judge is continued in the Upper Tribunal and I direct that no report or other publication of the proceedings or any part or parts of them shall name or directly or indirectly identify her.
3. The appellant arrived in the United Kingdom on 23 February 2013 and claimed asylum two days later having travelled in a lorry from Albania which she left on 20 February. She was screened about her claim on 11 March and a substantive asylum interview took place on 25 March.
4. The appellant's claim is that she had been forced into trafficking in Albania and elsewhere in Europe including Italy between November 2009 and February 2013 when she escaped. With the assistance of an agent who has retained her passport, she made her way to the United Kingdom. The Secretary of State did not accept the appellant had been trafficked.
5. The judge heard evidence from the appellant and took account also of a statement from a Ms Warda who has provided accommodation for the appellant since shortly after arrival. He did not accept that the appellant was credible about having been trafficked in Albania and that she had been subjected to three years and more of captivity enforced into prostitution.
6. The renewed grounds of application to the Upper Tribunal challenge the credibility findings in a number of respects including the argument that the judge had failed to make any findings on the risk faced by the appellant who was by the time of the hearing three months pregnant and had been disowned by her family. Mr Lams clarified that this ground was to be understood to mean that in the event that error was found in the judge's determination *and* the appellant was subsequently found to have been trafficked, her pregnancy and disownment by the family were factors relevant to risk assessment.
7. At the outset of the hearing I observed to the parties my concern that the judge had not reached any findings on the claim that the appellant had been disowned by her family. I was not persuaded that this aspect had been accepted by the Secretary of State and the question was whether this failure had the effect of undermining the credibility findings. Following detailed submissions I gave my decision that the determination was infected by error of law such that it required to be set aside and remade.
8. I gave short reasons at the hearing for this conclusion which I now develop more fully.
9. The appellant's claim is that her father is a lieutenant colonel in the army and that she is from a family of social standing. She was educated to university degree standard in business administration which she completed between 2004 and 2008. In 2007 she became engaged to an individual who became abusive and following a period of separation

reconciled before final separation in December 2008. These events led the appellant's father to disown her as his daughter.

10. Thereafter the appellant moved in with a university friend with whom she remained until March 2009. That friend helped her find a place to rent. The appellant found a job as a sales assistant at a BMW car showroom. She supplemented her inadequate income by modelling. In mid May 2009 she met Erjon Haxhiu. Their relationship developed. He was aware that the appellant's family did not want to have anything to do with her. He duped her into moving to a location from where she was required to work as a prostitute. She was unable to escape. She was also taken to different countries including a visit to Italy in October 2012 where she was caught with a false ID card and where she was held for about one hour. Whilst Erjon Haxhiu was away in January 2013 the appellant affected to have appendicitis. She was hospitalised. Although accompanied by two members of Haxhiu's gang she was nevertheless able to escape as they were not permitted to enter the doctor's accommodation. The appellant sought refuge with the university friend she had been with previously. Ejon Haxhiu had made contact with that friend. The arrangements were then put in place for the appellant to leave the country with funds that she had saved from tips.
11. On arrival in the United Kingdom the appellant was taken in by Ms Warda. She has met someone with whom she became pregnant in March 2013 but when he discovered her past, he no longer wished to have a relationship with her.
12. The judge commenced his findings of fact with this opening paragraph at [25]:

"I have considered the entire appellant's oral, written and documentary evidence carefully, subject to the relatively low standard of proof applicable to asylum claim. I have to say regrettably that I do not find her to be wholly accurate or a credible witness. Much of the background facts are true, as these are objectively uncontentious. Insofar as her core claim is concerned, however, namely the assertion that she was a "*trafficked woman*" in Albania, a woman subject to 3+ years of captivity and forced prostitution I do not find her to be credible."

The judge then noted counsel's submissions that with reference to *AM & BM* (trafficked woman) Albania CG [2010] UKUT 80 (IAC) there was no typical profile of a trafficked woman and that the appellant had given her evidence in considerable written and oral detail without any notable contradictions. He also noted that there was some basic corroboration from Ms Warda untested in cross-examination but nevertheless concluded that the account did not stand up to scrutiny.

13. The judge then gave his reasons as follows:
  - (i) having regard to her circumstances she was at the less likely end of the spectrum of a typical profile of a trafficked woman;

- (ii) the appellant was not duped into prostitution by a false job offer or false promise of marriage but the promise of a surprise on her alleged boyfriend's birthday;
  - (iii) the apparent ease of her escape (from a hospital) in 2013 was not "really consistent" but the allegation of three years plus of enforced captivity;
  - (iv) the appellant's failure to seek help from the Italian authorities during her arrest in October 2012 was inexplicable in the context of her core allegation;
  - (v) the judge was "simply not persuaded" that having escaped from hospital the appellant was taken in by Aida a friend whom she had not seen for over three years who then had a coincidental meeting with her abductor in the street;
  - (vi) the judge was not able to accept as credible that within minutes of being left at the station in the United Kingdom the appellant had bumped into Ms Warda who in the absence of any common language immediately offered her three plus months free accommodation and food and who, within a day or two, introduced her to Albanian friends one of whom formed an immediate sexual relationship with her. The judge concluded that the appellant's account of her first few weeks in the United Kingdom fell "a very long way short of the whole truth".
14. Mr Lams and Mr Melvin helpfully prepared skeleton arguments which they supplemented with vigorous submissions.
15. The renewed grounds of application rely on those submitted to the First-tier Tribunal after commentary on the reasons why permission was first refused. The first ground is that the judge had misdirected himself as to the evidence and it is asserted that the appellant had stated in her evidence she was unable to alert the Italian authorities as she was at all times accompanied by a colleague of her trafficker during her brief detention. Counsel's note of the procedures read with the judge's own record and inspected by the parties indicates that cross-examination on this point was short. The appellant was asked why she had sought (help) from the authorities and she responded that she was under the control of Erjon and that somebody else was around. As conceded by Mr Melvin, this point had not been raised as a challenge in the refusal letter and I do think it is questionable whether without further exploration and evidence the judge was correct to note at [14] of his determination that the appellant was alone with the Italian authorities.
16. The second point on this ground argues the judge had failed to provide any reason why he was not persuaded that the appellant had sought refuge with Aida. Bearing in mind that the appellant had previously lived with Aida, it was unobjectionable that she should seek her assistance

when she escaped. I have to say there is an absence of clear reasoning by the judge why he was not persuaded by the appellant's claim that she had gone to this friend. As to the meeting between Aida and the appellant's abductor it is argued that the meeting was not coincidental. The appellant's written evidence refers at [55] to her stay at Aida's accommodation until 15 February and that two or three days before she left her house she was informed Aida had met Erjon in the street. It appears that there was a coincidence and I consider the judge was entitled to question the plausibility of this having occurred.

17. Finally as to the appellant's escape, the grounds argue that no reasons were given for the finding that the ease of the escape was not "consistent". Mr Melvin argued I should not be concerned with semantics however if what the judge had in mind was that the escape was implausible it was open to him to say so. The use of the term "consistent" is puzzling.
18. The second substantive ground refers to the judge's conclusions on the profile of a trafficked woman. It was argued that the fact of the appellant having been disowned by her family was not in dispute and had been accepted by the judge. Mr Melvin accepted however that the judge had made no findings on this aspect. It is not evident from the refusal letter that this aspect had been accepted except on a hypothetical basis when considering the option of internal flight. I accept Mr Lams' submissions that a finding on this aspect was important in the overall assessment of the appellant's credibility and it would also be a relevant factor had the appellant found to be truthful. I am not persuaded that the judge proceeded on the basis that this aspect of the account being true. It is unclear what the judge meant by his reference to facts being "objectively uncontentious". Given the relevance of the appellant's circumstances leading up to her meeting with her abductor, I accept Mr Lams' argument that this aspect could not be screened off from the rest of the account. It is not possible to discern from the determination whether the judge factored in the pre-abduction events. If he did so, it is not apparent what regard he had to them in his conclusion that the appellant's claim was not credible.
19. The third ground relates to post-arrival events. It has to be said that the appellant's claim does test the limits of plausibility in part and I conclude the judge was entitled to question the appellant's account of events after reaching the United Kingdom. He was entitled to question the usefulness of the evidence of Ms Warda who was not called and I do not consider the judge erred in expressing the doubts he did about what has happened post arrival.
20. The fourth ground refers to the appellant being pregnant and that she had been disowned by her family. As I have observed above Mr Lams accepted that if the appellant had not been kidnapped as claimed, this would not be a risk factor.

21. By way of conclusion although the judge was entitled to doubt the evidence on parts of the appellant's claim, in some respects there is an absence of adequate reasoning and most significantly there was a failure to reach a conclusion on the whole story. I think that failure is fatal to the determination which I therefore set aside. As to the remaking, given the substantial credibility challenge by the Secretary of State and the need for a hearing afresh, the appropriate course is to remit the case to the First-tier Tribunal. The appeal will be heard on 19 September.
22. I make no further directions. That will be for the First-tier Tribunal should it decide to hold a Case Management Review. It will be for the respondent to decide whether she wishes to undertake further checks regarding the appellant's account of having been detained and fingerprinted in Italy. It will be for the appellant to decide whether to call Ms Warda to get evidence on her behalf.
23. Accordingly the appeal in the Upper Tribunal is allowed. The decision is set aside and the case remitted to the First-tier Tribunal pursuant to s.12 of the Tribunals, Courts and Enforcement Act 2007.

Signed

Date 15 May 2014



Upper Tribunal Judge Dawson