



IAC-FH-CK-V1

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

Appeal Number: AA/02142/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 27th July 2015**

**Decision & Reasons Promulgated
On 10th August 2015**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**M U
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard, Fountain Solicitors

For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Albania born on 5th May 1991. She appeals against the decision of First-tier Tribunal Judge Devittie dismissing her appeal against the refusal to vary leave under Section 83 of the Nationality, Immigration and Asylum Act 2002 on asylum grounds.
2. The grounds in essence argue that the judge had failed to give adequate reasons, failed to apply country guidance and failed to take into account the background material.

3. Permission to appeal was granted by First-tier Tribunal Judge Andrew on 3rd June 2015 on the ground that at paragraph 12 of the decision the judge found that the Appellant was of Gorani ethnicity and that she had been raped. However, he then did not go on to make findings as to whether or not the Appellant would be at risk on return because of these facts and as a member of a particular social group.
4. First-tier Judge Andrew was further satisfied that the judge had given inadequate reasons for his findings at paragraph 11 of the decision and therefore the grounds disclosed an arguable error of law.
5. In the Rule 24 response, the Respondent stated that the First-tier Tribunal Judge directed himself appropriately and comprehensively referred to AM and BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC) at paragraph 10 of the decision. At paragraph 11 the judge gave a plethora of reasons why the Appellant lacked credibility including the provenance of the money used to travel to Europe and the UK. The judge found that the Appellant struggled with her explanation and details. In respect of the rape the judge found that the Appellant would not be at risk given she remained in Albania for three years after the incident.

Submissions

6. Mr Howard, for the Appellant, relied on his grounds and stated that they were essentially three challenges to the determination, namely that there was a total lack of reasons, the judge had failed to consider the risk on return in accordance with the country guidance and the background material and, thirdly, he failed to consider the risk on return as a lone woman with a child including the risk of being trafficked.
7. Mr Howard submitted that there were insufficient reasons at paragraph 11 to support the judge's conclusions. The judge did not refer to any of the inconsistencies or the explanations given by the Appellant nor did he state why he had rejected them. In any event, the Appellant's evidence was clear and detailed and not vague as suggested by the judge. There was a total lack of reasoning in paragraphs 12 and 13 of the decision.
8. The Appellant was a lone woman of Gorani ethnicity with a child. There were no findings on sufficiency of protection or whether the Appellant as a member of a particular social group would be at risk on return. There were no reasons to support the finding that the Appellant was not exposed to a real risk of harm from her family or other persons.
9. The judge had failed to look at the enhanced risk factors set out in the country guidance. Essentially the judge had failed to apply AM and BM, the country guidance, to the facts of the Appellant's case and had failed to consider the fact that the Appellant was in fear of being trafficked on return. The judge had also failed to consider the background material, which showed extensive discrimination of the Gorani community. Accordingly, the Appellant's evidence that she would be vulnerable to

exploitation was not taken into account in accordance with Presidential Guidance.

10. For the Respondent, Mr Clarke submitted that there was no material error of law. The judge had given clear reasons and set out the oral and documentary evidence in the decision. In relation to each of the points in paragraph 11 (i) to (v), challenged in the grounds of appeal, Mr Clarke made the following comments. The judge had given reasons for why the Appellant had difficulty in explaining the source of the funds she had to use to travel to the UK. The Appellant was unable to confirm how much money she had stolen, how she had stolen it and how she was able to survive from July 2012 to 2013. The judge's findings were open to him taking into account the Appellant's evidence in the witness statement at paragraph 13 and in her asylum interview at questions 110 and 111. The judge had accordingly given proper reasons for why he did not accept the Appellant's evidence of the source of her funds.
11. In relation to paragraph 11(ii), the judge's reason for rejecting the Appellant's evidence was that the whole purpose of her story was to disguise a pre-arranged journey to the UK. The reason given by the judge was that the Appellant had failed to answer questions which naturally arose from her evidence or her answers were not satisfactory. Accordingly, the judge had considered all the evidence and was entitled to find that it was lacking in detail.
12. The judge found that the Appellant's evidence about whether her parents and family knew of her relationship with her partner contained material inconsistencies which were put to her in cross-examination and which she had failed to explain satisfactorily. It was clear that the judge had relied on the oral evidence and the inconsistencies set out at paragraph 11 of the decision and there was no need to duplicate his reasons at paragraph 11.
13. The Appellant had failed to rebut the allegation in the refusal letter that she had failed to provide evidence of how she met her partner and there was no corroborating evidence before the judge. Her answers in her interview when asked to provide details of those who had undergone forced marriages were incoherent. It is clear when reading questions 35 and 36 together that the Appellant was being asked to identify those in her family who had been forced into marriage. The Appellant's response, that many girls had been forced into marriage, was not specific and she had avoided answering the question. Accordingly the judge's conclusion that the Appellant had failed to show that she was at risk of a forced marriage was open to him because the Appellant was unable to give such details in her interview. It was equally open to him that she had pre-arranged her trip to the UK because her evidence on this point was inconsistent and implausible.
14. Therefore, if the judge did not accept that the Appellant was at risk of a forced marriage, she would not be at risk on return. There was no reason

why she could not return to her family. The incident of rape was not relevant because of the passage of time. The Appellant had no problems prior to leaving Albania. The judge had given adequate reasons for why the Appellant could return to her family and why her claim was not credible. The case had not been put on the basis that the Appellant could not return because her child was born out of wedlock but in any event this would not pose a risk of persecution on return given the judge's finding that the Appellant was someone who could return to her family. She was not returning as a lone female who had been trafficked or who was at risk of being trafficked.

15. Although it was accepted that those of Gorani ethnicity were discriminated against the background evidence did not support persecution of Gorani *per se*. There was insufficient evidence before the judge to demonstrate that someone who returns to her Gorani family would be at risk of harm.
16. In response Mr Howard submitted that the Appellant had a low level of literacy, therefore it was not implausible that she did not know the amount of money that she stole and she had explained in her statement at paragraph 12 why she had not told her partner that she did not intend to return to Albania. The judge had failed to make findings on a material fact, namely the consequences of having a child out of wedlock and how the Appellant would be able to return to her family. There was a total lack of reasoning in the judge's decision. The Appellant was at enhanced risk and the judge had failed to apply paragraphs 158 and 159 of AM and BM. Since the Appellant was in fear of being trafficked the same features would apply to her case.
17. The particular features of the Appellant's case when taken together were not considered by the judge in their totality. These would have established that the Appellant was at risk on return.

Discussion and Conclusions

18. The Appellant claims that she is at risk on return:
 - (i) from attackers who raped her three years before she came to the UK;
 - (ii) from her parents, who had arranged a marriage for her; and
 - (iii) as a lone woman returning with a child out of wedlock who was therefore vulnerable to trafficking.
19. The judge found that the Appellant would not be at risk from her attackers on the basis that she had lived in her home in Albania for three years after the rape without encountering the men who attacked her. This finding was open to the judge on the evidence and therefore the Appellant would not be of adverse interest some five years later. The judge did not fail to apply country guidance or consider the background material in respect of this finding.

20. The judge found that the Appellant was not a credible witness for the reasons given at paragraph 11(i) to (v). He found that her account was inconsistent, lacking in detail and not supported by evidence which she ought to have been able to produce if her account was true. These findings were open to the judge on the evidence before him and, reading the decision as a whole, he gave adequate reasons for his conclusions. The judge was entitled to rely on the Appellant's answers in interview and in oral evidence to support his reasoning.
21. The judge found that the Appellant had come to the UK with her partner and fabricated her asylum claim. He rejected the Appellant's claim that she had fled an arranged marriage. The Appellant could therefore return to her family without risk of harm and/or trafficking.
22. Having rejected the Appellant's claim the judge was entitled to find that she could return to her family in Albania and therefore she would not be returning as a lone female with a child. There was no failure on the part of the judge to apply country guidance or to consider background material. His finding that the Appellant would not be at risk on return was open to him on the evidence.
23. The Appellant had come to the UK with her partner and was not fleeing Albania as she claimed. Applying the country guidance and taking into account the background material, the Appellant would not be at risk on return because she could return to her family. The Appellant had not shown on the evidence before the First-tier Tribunal that she would not be able to return because she had a child out of wedlock.
24. Accordingly, I find that there was no material error of law in the decision of the First-tier Tribunal and the Appellant's appeal is dismissed. The decision promulgated on 11th May shall stand.

Notice of Decision

The appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 31st July 2015

Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 31st July 2015

Upper Tribunal Judge Frances