



IAC-AH-SAR-V1

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

Appeal Numbers: AA/06955/2014
AA/07121/2014
AA/07122/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 2nd November 2015**

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

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**ALTA CURRI
RNC
RAC
(ANONYMITY ORDER NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms L Mair of Counsel instructed by Immigration Advice Service Limited

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellants appeal against a decision of Judge Lambert of the First-tier Tribunal (the FtT) promulgated on 2nd February 2015.
2. My view is that there should only be one Appellant, that being Alta Curri. The second and third Appellants are her minor children born 26th January 2010 and 26th September 2012 respectively. Their names and appeal numbers have been added to the First-tier Tribunal decision in manuscript, and permission to appeal was granted, referring to all three Appellants, although the second and third Appellants were referred to as being dependants of the first Appellant.
3. The appeals entered by the second and third Appellants were found to be invalid by Judge of the First-tier Tribunal Monro in a decision dated 25th September 2014. There appears to have been no challenge to that decision, and therefore the second and third Appellants should not have been named as Appellants in the First-tier decision. I conclude that their position is that they do not have a valid in-country right of appeal, which is the decision that was made by Judge Monro.
4. The Appellant is a female Albanian citizen born 19th May 1988 whose asylum claim was refused by letter dated 27th August 2014, and on 1st September 2014 a decision was made to remove her from the United Kingdom.
5. The appeal was heard by the FtT on 28th January 2015. After hearing evidence from the Appellant, the FtT decided that the claim was not credible and the Appellant would not be at risk if returned to Albania. The appeal was dismissed on asylum, humanitarian protection, and human rights grounds.
6. The Appellant applied for permission to appeal to the Upper Tribunal. In summary it was contended that the Appellant had claimed asylum on two grounds, the first being that she was a victim of domestic violence, and the second being that she was a victim of sexual trafficking. It was contended that the FtT in concluding that the Appellant had not been physically ill-treated by her husband's family, had neglected to consider that domestic violence is not restricted to physical ill-treatment. Reference was made to the Respondent's definition of domestic violence as stated in her policy guidance, which confirms domestic violence can include but is not limited to abuse which is psychological, physical, sexual, financial, or emotional.
7. It was also contended that the FtT had erred in paragraph 9.10 of the decision by recording that the Appellant's counselling had been initiated by a referral from a social worker, and had not taken into account an NHS letter confirming that the Appellant had been accepted for counselling following an assessment by the NHS. The referral for counselling was therefore not accepted simply on the basis of the assessment by the social worker.

8. Permission to appeal was granted by Upper Tribunal Judge Blum in the following terms;
 - “2. The Grounds of Appeal assert that the judge erred in her approach to the first Appellant’s claim to have suffered domestic violence. The determination, it is argued, suggests the judge required evidence of physical abuse before being entitled to find the Appellant was the subject of domestic violence. Although the judge was not satisfied that the Appellant gave a credible account of both being trafficked and facing any fear from her husband’s family (para 9.11), there were no actual findings of fact relating to the treatment the Appellant claims she received from her husband’s family. It is unclear whether the judge accepted or rejected the evidence from the Appellant identified at 9.5 (being upset, unable to cope, and having suffered in her in-laws’ house) or the assertions in the Appellant’s statement (under the heading ‘relationship with husband’s family’), although the judge does note an inconsistency in respect of the Appellant’s ability to visit her parents’ home (9.6).
 3. It is arguable that the judge failed to make material findings of fact in respect of the Appellant’s claimed fear from her in-laws, despite rejecting her claim to have been trafficked, and that the judge misdirected herself in respect of what needs to be proven in order for there to be domestic violence.
 4. The grounds also contend that the judge misunderstood the basis of a referral for counselling and that this may have reduced the reliance she placed on the medical evidence. Although less meritorious I grant permission on this ground as well”.
9. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008 contending, in summary, that the FtT had directed itself appropriately and the grounds amounted to a lengthy disagreement with the reasoned findings that had been made.
10. Directions were issued making provision for there to be a hearing before the Upper Tribunal to decide whether the FtT decision contained an error of law such that it should be set aside.

Submissions

11. Ms Mair relied upon the grounds contained within the application for permission to appeal, and in summary submitted that the FtT had erred by failing to make findings in relation to the domestic abuse which the Appellant claimed to have suffered from her in-laws. This was an issue raised in both the witness statements submitted by the Appellant to the FtT, and in questions 33-34 of the interview record.
12. It was accepted that there was some reference to domestic violence in paragraphs 7.2 and 9.5 of the decision, but no material findings were

made. It was further submitted that the FtT failed to have regard to the correct definition of domestic abuse, which was not restricted to physical ill-treatment.

13. It was submitted that the FtT had erred in paragraph 9.10 by indicating that the Appellant's counselling had been initiated by referral from a social worker, whereas there had in fact been an NHS assessment.
14. Mr McVeety relied upon the rule 24 response. Dealing with the counselling issue, Mr McVeety pointed out that there was no psychiatric report and no counselling report. The FtT had not erred by stating that the counselling had been initiated by referral from a social worker, as this was in fact exactly what had happened.
15. Mr McVeety submitted that the FtT had not stated anywhere in the decision, that domestic violence was restricted to physical violence. The FtT had considered credibility in the round, and explained in paragraph 9.6 why the Appellant was found incredible. In paragraph 9.11 the FtT had rejected the core of the account, and reasons had been given which were adequate and sustainable.
16. By way of response Ms Mair submitted that the most anxious scrutiny must be undertaken when considering domestic abuse, and the reference by the FtT in paragraph 9.5 to a lack of physical ill-treatment, indicated that the FtT was restricting domestic violence to physical ill-treatment.
17. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

18. I consider firstly the contention that the FtT failed to make material findings of fact in respect of the Appellant's claimed fear from her in-laws, and whether the FtT failed to appreciate the correct definition of domestic violence. I find no error of law for the following reasons. The FtT decision must be read as a whole. The Appellant's account was rejected in paragraph 9.11, and this included rejection of the Appellant's claimed fear from her in-laws. For ease of reference I set out below paragraph 9.11 of the FtT decision;

'9.11The cumulative effect of all of the above concerns as to the credibility of the evidence put forward by the Appellant is such that I find no substantial grounds for thinking that the core elements of her account of having been trafficked to the United Kingdom or having any well-founded fear of persecution from either her own or her husband's family are likely to be true'.
19. The FtT gave adequate reasons for finding that the Appellant's account lacked credibility, and these reasons are contained in paragraphs 9.5-9.10. Adequate reasons for those findings are contained within these paragraphs.

20. The FtT did not restrict the definition of domestic violence to include only physical violence. In paragraph 9.5 the FtT was setting out the Appellant's account that she was not physically ill-treated, and this was also referred to in paragraph 7.2 of the decision. These findings were taken from the Appellant's witness statements, and her interview record (question 34). The FtT noted in paragraph 9.6 an inconsistency in the Appellant's account, in that it was claimed that her in-laws would not let her contact anybody, but would allow her to visit her own parents and stay for several weeks.
21. In my view the FtT has made it clear that the Appellant's account of suffering domestic violence, which was not restricted to physical violence, from her in-laws was not accepted. The FtT did not misdirect itself as to what needs to be proved in order for there to be a finding of domestic violence.
22. I find no merit in the contention that the FtT erred in misunderstanding the evidence as to counselling. The FtT recorded in paragraph 9.10 that the medical evidence disclosed no clear diagnosis, and was correct to find that the counselling was initiated by a referral from a social worker, although following that referral there was an NHS assessment and counselling commenced. I find no error on this point.
23. In my view the grounds contained within the application for permission to appeal demonstrate a disagreement with the conclusions reached by the FtT, but do not disclose an error of law.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision must be set aside. I do not set aside the decision, and the appeal is dismissed.

Anonymity

No anonymity direction was made by the First-tier Tribunal. There was no request for anonymity made to the Upper Tribunal and no anonymity order is made.

Signed

Date 4th November 2015

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

There is no fee award.

Signed

Date 4th November 2015

Deputy Upper Tribunal Judge M A Hall