



IAC-FH-CK-V1

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

Appeal Number: AA/02172/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 23 December 2015**

**Decision & Reasons Promulgated
On 22 January 2016**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**SZ
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Harding, Counsel instructed by Kilby Jones Solicitors LLP

For the Respondent: Ms A Brocklesby-Weller, Home Office Presenting Officer

DECISION AND REASONS

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.

1. The appellant is a citizen of Albania and her date of birth is 9 October 1988.
2. In a decision of 22 January 2015 the Secretary of State refused the appellant's application for asylum. The appellant appealed and her appeal was dismissed by First-tier Tribunal Judge Owens in a decision following a hearing on 9 June 2015. The decision was promulgated on 3 July 2015. Judge Owens dismissed the appellant's asylum claim.
3. Permission was granted to the appellant by Upper Tribunal Judge Coker on 21 September 2015 and thus the matter came before me.
4. The appellant's case is that she is the victim of trafficking. Her evidence before the First-tier Tribunal was that whilst in Albania she formed a relationship with a male called Arben. Her family did not approve of the relationship and she travelled to Italy with Arben against the wishes of her family in 2009. Whilst in Italy, Arben's friend (Nardi) forced her into prostitution. She worked in Italy as a prostitute between March 2010 and November 2012 when she was arrested. She agreed to return to Albania because she was frightened of Nardi. Her parents rejected her because they had found out that she had been trafficked. She left Albania after a week because she was frightened Nardi would return there and that she would be re-trafficked.

The Findings of the First-tier Tribunal

5. The judge heard evidence from the appellant. The judge observed that the National Referral Mechanism had concluded that the appellant was the victim of trafficking and that the decision letter, in which it was maintained that the appellant's account of having been trafficked was not credible, was based on a misunderstanding. The judge recorded at [8] that the Presenting Officer conceded that an error had been made and indicated that he would not seek to go behind the finding that the appellant had indeed been trafficked.
6. The judge went on to make findings in relation to the appellant's credibility at [29] to [40]. The judge found the appellant's account to be credible and recorded that the Presenting Officer did not challenge her credibility and he accepted her account as set out in her asylum interview. The judge found that the appellant had decided to travel to Italy with Arben in order to seek work. It was difficult to find work and he became involved with selling drugs which led to his arrest.
7. The judge found that the appellant stayed with Arben's friend (Nardi) (see [34]) and he coerced her with the use of violence and threats to work as a prostitute. She was locked in a house from March 2010 until November 2012 when the Italian police raided the house and she was detained and interviewed. Nardi was arrested by the Italian police. The appellant contacted her family on return but they rejected her and the appellant believes that they are aware that she worked as a prostitute. The

appellant escaped Albania with the help of a friend and arrived in the UK on 3 December 2012. Since that time she has had no contact with anyone in Albania. The appellant is suffering from depression.

8. The judge went on to consider risk on return to the appellant's home area and she found at [47] that the appellant would not be at risk from traffickers in her own village. The judge found that she had never worked as a prostitute in Albania and the forced exploitation had indeed taken place in Italy where she had travelled voluntarily and where she had agreed to go with her boyfriend.
9. The judge found that she was not coerced by traffickers from her home area. The judge found that the appellant is not aware of the whereabouts of Nardi. She does not know whether he is in prison or indeed whether he is still in Italy and the judge found that there was no evidence that the trafficker is aware of where the appellant's family lives and that there is no evidence that Nardi or his associates have tried to locate the appellant or threaten her family over the two and a half years since she was freed from trafficking and returned to Albania.
10. The judge did not find it plausible that Nardi would seek out the appellant in Albania two and a half years after these events, noting that she did not testify against him or cooperate with the Italian authorities. The judge found that he would not be motivated to seek her out in Albania. The judge found that Nardi was not a part of a large criminal organisation with connections across Albania and internationally.
11. The judge went on to find that the appellant's recent evidence was not consistent with the evidence that she gave in her asylum interview in relation to Nardi and connections that he may have. The judge attached weight to the fact that there was no evidence that Nardi has attempted to trace the appellant or threaten her family or friends (see [51]). The judge found that the appellant had not established that should she return to her home area Nardi or his associates would seek her and attempt to retraffic her.
12. The judge went on to consider relocation, concluding that the appellant had been able to make her way to Tirana in 2012 where she has a friend. The judge took into account that the appellant is highly educated, having a university degree in social sciences, and that she speaks English and concluded that she is employable. He took into account the appellant's mental health at [54] and the judge found that there are NGO organisations which would provide support for trafficked women and that she could live independently as a single female in an urban centre such as Tirana where she could obtain medication for depression.
13. The judge went on to conclude that if indeed the traffickers would seek the appellant out she would have sufficiency of protection by the Albanian authorities. The judge directed himself in relation to AM and BM (Trafficked women) Albania CG [2010] UKUT 80 and also took into account

more up-to-date country information and guidance in relation to trafficking in Albania, noting that there had been significant developments with regard to the investigation and prosecution of traffickers and protecting victims of trafficking. The judge did not accept that protection is not available, having considered the latest background information, and again, in relation to sufficiency of protection the judge took into account that the appellant was well-educated and able to communicate any concerns she may have to the police.

14. The grounds seeking permission are twofold. First the judge erred in relation to the assessment of risk on return to the home area and secondly that he erred in relation to internal relocation.
15. I heard oral submissions from both representatives and I communicated my decision at the hearing. In my view the judge materially erred in relation to risk on return to the appellant's home area. The judge accepted at [34] that Nardi was indeed a friend of the appellant's boyfriend and this cannot be reconciled with the judge's finding at [47] that there was no evidence that the trafficker was aware of where her family lives.
16. The judge accepted at [39] that the appellant has had no contact with anyone in Albania since arriving in the UK and this cannot be reconciled with the judge's findings that there was no evidence that Nardi or his associates had tried to locate the appellant's family. Both these findings were relied upon by the judge to support his conclusion that the appellant would not be at risk on return to the home area.
17. I have taken on board Ms Brocklesby-Weller's submission that if the judge made errors in relation to risk on return this is not material because he went on to consider relocation and sufficiency of protection. The judge made findings in relation to Nardi and whether or not he is part of a larger criminal organisation (see [49] and [50]). In isolation these findings would be sustainable. However, had the judge properly considered risk on return to the home area and concluded that the appellant would be at risk, I cannot be sure that the conclusion on relocation would be the same as that found by the judge. The error taints the assessment of relocation and thus is material to the outcome of the appeal.
18. I am also concerned that the judge made a distinction between having been trafficked whilst in Albania and the appellant's case of having been trafficked by an Albanian whilst in Italy. In the light of the connection between Nardi and Arben, it is arguable that the distinction is meaningless in the context of risk.
19. I set aside the decision of the First-tier Tribunal to dismiss the appellant's appeal on asylum grounds. I am aware that a country guidance case in relation to victims of trafficking in Albania is likely to be promulgated early in 2016. I remitted the matter to the First-tier Tribunal in order to rehear the appeal and make findings in relation to risk on return, relocation and

sufficiency of protection. At the hearing before me both parties agreed that the findings of the judge at paragraphs 29 to paragraph 40 should be maintained.

20. I note that the Reasons for Refusal Letter is premised on the appellant not being a victim of trafficking whilst clearly this, as accepted by the respondent, is not the case and it may be that in the light of this the respondent wishes to amend the decision.

Notice of Decision

The decision of the First-tier Tribunal is set aside and the appeal is remitted to the First-tier Tribunal for a rehearing. A number of findings are maintained (see above at [20]).

Signed Joanna McWilliam

Date 14 January 2016

Upper Tribunal Judge McWilliam