



Upper Tribunal

(Immigration and Asylum Chamber)

AA/02634/2015

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House, London

Decision & Reasons

Promulgated

On 25<sup>th</sup> February 2016

On 31<sup>st</sup> March 2016

Before:

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between:

Ms [E D]

~~(Anonymity direction not made)~~

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Stuart-King (Counsel)

For the Respondent: Ms Willocks-Briscoe (Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge Henderson dated the 10<sup>th</sup> September 2015, in which he dismissed the Appellant's asylum appeal.

### Background

2. The Appellant is a national of Albania who was born on the 30<sup>th</sup> May 1992. It is the Appellant's case that she married a Mr [ED] without her family's consent and lived with him in Tirana, but had no further contact with her family after the marriage. Her husband worked as a waiter, but also carried out building work in Greece to earn extra money. She says that in August 2012 when her husband was working away in Greece she began a clandestine relationship with Mr [ET], and on the 13<sup>th</sup> January 2013, [ET] invited the Appellant to go to a party at a house in Durres city. When she arrived at the house, she entered, and it is her case that she was prevented from leaving and forced to have sex with men who were brought to the house on a daily basis, such that she was forced into prostitution.
3. She says on the 24<sup>th</sup> March 2013, she was able to open the door to her room to go to the toilet, and found that the house key was in the front door and was not locked such that she was able to escape from the house. She says that she managed to catch a bus to Tirana and went to her husband's family home and that her husband was there and that she told her husband and his family that she had been kidnapped and she was afraid that they would not help her if she told them the truth. She says that her husband suggested they leave for Albania together and they travelled to Italy, then through France to the UK. She said that she then discovered that she was pregnant and that she conceived during the time she had been detained in the house in Durres and that when she told her husband he was angry, as he

realised that the child could not be his and he wanted her to terminate the pregnancy, but when she refused he left her on the 21<sup>st</sup> September 2013.

4. The Appellant's original claim for asylum was rejected by the Respondent in a Refusal Letter dated the 20<sup>th</sup> January 2015. The Appellant appealed against that decision, and that appeal was heard by First-tier Tribunal Judge Henderson on the 2<sup>nd</sup> September 2015 at Taylor House, and he rejected the Appellant's appeal for the reasons set out in his decision which was promulgated on the 22<sup>nd</sup> September 2015. The Appellant sought to appeal against that decision to the Upper Tribunal, and although permission to appeal was originally refused by First-tier Tribunal Judge Kelly on the 27<sup>th</sup> October 2015 permission to appeal has been granted by Upper Tribunal Judge Chalkley on the 13<sup>th</sup> December 2015 who found that "It is properly arguable that the findings may not be properly reasoned."
5. I have fully taken account of the contents of the Grounds of Appeal and also the Respondent's Rule 24 reply. These are a matter of record and are therefore not repeated in full here, but the legal representatives elaborated upon the reasons set out within these documents at the oral appeal hearing and I have fully taken account of those submissions also.
6. In her submissions to the Tribunal Ms Stuart-King argued that the First-tier Tribunal Judge had not given adequate reasons and the relevant evidence had not been taken into account and that he may have departed from the Country Guidance cases and had had made unclear findings in respect thereof. She argued that at [41] the First-tier Tribunal Judge had said that "the Appellant did not explain the inconsistencies set out in the home office's decision (as above) and did

not give any further evidence to suggest that the decision was incorrect". She argued that it was unclear what the Judge had meant by this and that the Appellant had produced a witness statement between pages 96 and 100 of the Appellant's Bundle dated the 7<sup>th</sup> August 2015, in which she gave explanations as to the points of credibility raised within the Refusal Notice.

7. She argued that it was unclear from the Judge's reasoning within [41] which paragraphs of the refusal letter remained unanswered and that an explanation for the inconsistencies had been given between paragraphs 10 and 14 of her statement. She argued that if the Judge considered that these explanations were insufficient, then he was under a duty to say so and give reasons therefore. She argued that the Judge does not appear to have taken account of the contents of the Appellant's witness statement.
8. Ms Stuart-King further argued that the Judge's finding at [43], that the Appellant had not explained why her husband had not tried to contact her for the 2 months when she was in the house in Durres, that this was not a point that was ever put to the Appellant at the appeal hearing and that she should have been given the opportunity to give evidence as to whether or not her husband had tried to contact and that her own evidence was that her phone had been taken away from her by her kidnappers. She argued there was no evidence that he had not tried to contact her and that this point was not dealt with either within the original refusal letter or at the appeal.
9. Ms Stuart-King further argued that the Judge at [44] stated that "the Appellant says that when she managed to run away she went to her in-laws home and her husband happened to be there. She told them that she had been kidnapped and her husband then decided that they

would leave Albania together" and then found that this account lacked credibility, was inadequately reasoned. She said that the Judge had not given any reasons as to why it was said that account lacked credibility and that the Judge's reasoning within that paragraph that "the Appellant also said that she told her husband that she had been forced into prostitution during her kidnapping, but that he felt sorry for her and had not abandoned her. This demonstrates that she had not left Albania because she feared persecution, but because she had been encouraged to do so by her husband and that she left Albania under his protection." was a non-sequitur, and that even if she left with her husband and under his protection, that did not mean that she did not fear persecution. She further argued that any adverse credibility finding in this regard further failed to reflect the fact that the Appellant was now separated from her husband and would be returning to Albania as a single woman with a child, rather than with her husband.

10. Ms Stuart-King further argued that the Judge's finding at [47] that "It is possible that although she entered into the relationship with [ET] voluntarily, that she was forced to have sex with his friends and associates and this is why she ran away from the house in Durres (even if she was not abducted as such).", is possibly inconsistent with the Judge's previous findings.

11. Ms Stuart-King further argued that between [48 and 52] of the judgment the Judge had failed to properly make findings in respect as to whether or not the Appellant met the criteria in the case of AM and BM (Trafficked Women) Albania CG [2010] UKUT 80 (IAC) and the Judge stated why his findings in respect of the 6 criteria set out within that case meant that either the Appellant did or did not fall within one of the categories of people at risk, and whether or not she would be able to integrate back into society in Albania, and whether she will be able

to access the arrangements of facilities available to trafficked women in Albania. She argued that if the Judge's finding was that she had not been trafficked, then he had not properly dealt with her ability to integrate as a single woman with a child born out of wedlock.

12. She further argued that the Judge had failed to take account of the evidence of Dr Cornelius Katona, in the form of his psychiatric report dated the 25<sup>th</sup> June 2015, and his findings that the Appellant was suffering from PTSD, in assessing her evidence.
13. Ms Willocks-Briscoe on behalf of the Respondent relied upon the Secretary of State's Rule 24 Reply in which it was argued that the Judge had directed himself appropriately and that the Judge had found the Appellant was not credible in respect of her asylum claim and had given adequate reasons for those findings at paragraphs [41 to 46]. It was argued that the findings were neither perverse nor irrational.
14. Ms Willocks-Briscoe further elaborated and argued that in respect of [41] that in her statement the Appellant had simply reiterated what she had said in interview and had not changed her case in that regard, even if she had not been provided with an interpreter. She argued that what is stated within the witness statement simply mirrored what was said within the interview. She further argued that the Appellant had numerous opportunities to present evidence regarding her husband trying to contact her, but had not taken those opportunities. She agreed that that issue had not been raised within the Refusal Notice and that she was not aware of any evidence of it having been raised within the appeal, but argued that the Judge was making an observation, rather than a finding and that it was an observation only, rather than a credibility finding against her.

15. Ms Willocks-Briscoe further argued that in respect of [44] given that the finding was that the Appellant had gone to her in-laws home and that her husband was there, she could not argue that that was implausible, but argued that the Judge's finding in that regard was not material. She argued that the findings of the First-tier Tribunal Judge at [44] had to be read in conjunction with the findings at [45] and should not simply be read in isolation. She further argued that the Judge had not accepted the Appellant's account that she had been trafficked and/or forced into prostitution, and had simply set out his consideration of the AM and BM case, as an alternative basis for his findings.
16. I reserve my decision on error of law and the question of materiality.

#### My Findings on Error of Law and Materiality

17. First-tier Tribunal Judges when conducting a First-tier Tribunal appeal hearing against the decision of the Secretary of State, are not simply reviewing the decision of the Secretary of State, they are conducting a rehearing. It is therefore vital that First-tier Tribunal Judges' do give adequate and sufficient reasons for their findings, and that their findings are sufficient and clear to mean that the losing party, in particular, knows why they have lost.
18. In dealing with the inconsistencies which were said to been found by the Home Office in the reasons for refusal letter at [20], First-tier Tribunal Judge Henderson stated:

"The Respondent relied upon the Home Office's conclusive findings that the Appellant was not the victim of trafficking and in particular on the inconsistencies mentioned in those findings. These essentially relate to the Appellant's account of her detention in the house in Durres and her description of her escape from that house. Further the Appellant went to her husband's family home, yet she said that [ET] knew where her husband and family lived and had threatened them. The Appellant had been safe there for at least a month before leaving Albania. Also the Appellant had returned to Durres (where the house was situated) to leave for Italy. This was regarded as unlikely bearing in mind her statement about [ET] and his ability to find her and harm her and her family".

19. First-tier Tribunal Judge Henderson went on at the start of his conclusions to find at [41] "on the basis of the evidence before me and bearing in mind the Home Office Conclusive Grounds Decision on the 12<sup>th</sup> June 2014 I find that the Appellant is not a victim of trafficking. The Appellant did not explain the inconsistency set out in the Home Office's decision (as above) and did not give any further evidence to suggest that the decision was incorrect".

20. Although bearing in mind as I do that the decision has to be read as a whole, I find that the Judge's reasoning in respect of the alleged inconsistencies is inadequate. The First-tier Tribunal Judge has not set out what actual inconsistencies he finds in the Appellant's account, and simply relies upon a very scant description of those inconsistencies which he set out at [20]. Further, although he states that he has taken account of the Appellant's witness statement dated the 7<sup>th</sup> August 2015 at [25], there is no reference to the further explanation that the Appellant gave at paragraph 10 of her statement dated the 7<sup>th</sup> August 2015, as to why she disagreed with the decision of the Secretary of



State and the Conclusive Grounds Decision. Nor is there reference to her explanation as to how from the 13<sup>th</sup> January she was locked in a room and would be accompanied to the toilet by a man, but that after one month they became more relaxed as she was seeing clients and earning money and that they would then let her go to the toilet herself, but there was still someone outside the room, apart from the day when she escaped and she did not know why there was no one there that day and that the day she escaped was the only time that she was left unguarded, but that there were always men in the house. It is unclear from the Judge's findings that this further explanation has in fact been taken into account by him in reaching his decision. Whether or not he accepted that account, the Appellant had given further evidence in an attempt to suggest that the original decision was incorrect, but it is unclear from the Judgement as to whether or not the Judge has in fact actually considered that further explanation, and he has not given clear reasons within [41] as to why that further explanation was rejected. The First-tier Tribunal Judge simply stating the Appellant had not explained the inconsistencies set out in the Home Office's decision and had not given further evidence to suggest that decision was incorrect failed to take account of the fact that the judge was not considering what not conducting a review of the reasons for refusal letter, but was conducting a rehearing, and was duty-bound to set out his own findings regarding any inconsistencies in the Appellant's evidence and the reasons for his findings in that regard. His failed to do so.

21. Further, the Judge's finding at [44] that "the Appellant says that when she managed to run away she went to her in-laws home and her husband happened to be there. She told them she had been kidnapped and her husband then decided that they would leave for Albania together. Again this account lacks credibility", I find to be inadequately

reasoned. There is no reason, as was properly conceded by Ms Willocks-Briscoe, as to why the Appellant's husband should not be at his parents' home, and the Judge has not explained why if the Appellant then told her husband that she had been kidnapped, that they would not decide to leave Albania together. The simple description that this account lacks credibility, does not tell the Appellant why her account was not accepted in this regard.

22. Further, the First-tier Tribunal Judge's finding that "the Appellant also said that she told her husband that she had been forced into prostitution during her kidnapping, but that he felt sorry for her and had not abandoned her. This demonstrates that she had not left Albania because she feared persecution, but because she had been encouraged to do so by her husband and that she left Albania under his protection" at [44], is as was argued by Ms Stuart-King, I find is a non sequitur, in that even if she was encouraged to leave by her husband and left with him "under his protection", that does not necessarily mean that she had not left because she feared persecution. Although the Judge goes on to at [45] to consider the Appellant's evidence that she was afraid that [ET] would find her if she returned to Albania, this paragraph does not, as was sought to be contended by Ms Willocks-Briscoe, justify the lack of reasoning at [44] for the Judge's find that she had not left Albania because she feared persecution. The Judge has not sought to link the reasoning at [45] as to his finding that she had not left Albania because of persecution, but is simply dealing at [45], with her risk upon return.

23. Further, I find that the Judge's finding at [47] that "It is possible, although she entered into a relationship with [ET] voluntarily, that she was forced to have sex with his friends and associates and this is why she ran away from the house in Durres (even if she was not abducted

as such)" is inconsistent with the Judge's previous findings that she had not been "kidnapped" and detained against her will and that she was not a victim of trafficking. Even if she went to the house voluntarily, if she is then detained there and forced to have sex with [ET]'s friends and associates, such that she had to run away from the house in Durres, she would still be a victim of trafficking. The Judge has not properly explained his reasons or his findings in this regard. This was not, as was argued by Ms Willocks-Briscoe on behalf of the Respondent, simply a finding in the alternative, as nowhere does the Judge state that if he is wrong in the original findings, he would have found as an alternative basis that "it was possible that she had been forced to have sex with friends and associates".

24. Nor do I consider that the Judge was simply commenting or observing at [43] that the Appellant had not explained why her husband had not tried to contact her for two months when she was detained in the house in Durres. These were part of the Judge's findings in terms of credibility. It was not simply an observation on his part, but was part of his conclusions. Given that this was not raised within the Refusal Notice and on the evidence before me and was not raised at the appeal hearing with the Appellant, I find that it was procedurally unfair for the First-tier Tribunal Judge to have sought to make adverse credibility findings against the Appellant in this regard, without giving her the opportunity to explain this point further.

25. I further find that in respect of the Judge's consideration of the sufficiency of protection upon return between [47] and [53] that although the First-tier Tribunal Judge did make findings in respect of the factors (a) to (f) of the criteria set out within AM and BM, in terms of the Appellant's family being of a modest economic standing and that she and her family had a basic education and the fact that she was

suffering from PTSD, but was being treated by medication and that she was not suicidal, and that she had a young daughter who may not be technically illegitimate but who had not been accepted by the Appellant's husband, and that as she is married there is not necessarily the stigma of illegitimacy attached to the child, the First-tier Tribunal Judge has not explained in light of these factors, why he considers that the Appellant would be unable to access sufficient protection from the authorities upon her return to Albania. The reasoning as to what his findings mean in terms of her ability to access sufficient protection has not been adequately explained.

26. I therefore do find that the decision of First-tier Tribunal Judge Henderson does contain material errors of law, and given that these material errors of law do go to the questions of both credibility and risk upon return, these errors are material, such that the decision of First-tier Tribunal Judge Henderson is set aside and the matter is to be remitted back to the First-tier Tribunal for rehearing before any Judge other than First-tier Tribunal Judge Henderson.

#### Notice of Decision

The decision of First-tier Tribunal Judge Henderson containing material errors of law, the same is set aside;

The matter is remitted back to the First-tier Tribunal for rehearing, to be heard before any First-tier Tribunal Judge other than First-tier Tribunal Judge Henderson.

Signed

Dated 26<sup>th</sup> February 2016

*Rob McGinty*

Deputy Judge of the Upper Tribunal McGinty