



IAC-FH-NL-V1

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

Appeal Number: AA/05800/2015

THE IMMIGRATION ACTS

**Heard at Stoke
On 12 April 2016**

**Decision & Reasons Promulgated
On 17 May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**SL
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. T. Royston, Counsel instructed by Heath and Power Solicitors LLP

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

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge A. C. Holt, promulgated on 6 July 2015, in which she dismissed the Appellant's appeal against the Respondent's decision to refuse to grant asylum.
2. Permission to appeal was granted as follows:
"It is arguable that the judge may have erred in law by setting out as a preliminary matter the provisions of section 8 of the 2004 Act, and who

considered the appellant's failure to claim asylum in Belgium a safe third country and the short delay in failing to claim asylum on arrival in the United Kingdom as a starting point for her assessment of credibility contrary to the decision in **SM (section 8; Judge's process) Iran [2005] UKAIT 00116**.

Other grounds such as conflating plausibility with credibility and a failure to adequately reason why a granite merchant would not have power and influence to trace the appellant in Albania may also be arguable."

3. I heard oral submissions from both representatives following which I reserved my decision which I set out below with reasons.

Submissions

4. Mr. Royston relied on his skeleton argument. He submitted that the primary failure of the judge in relation to section 8 was her failure to apply the full ratio of SM (section 8; Judge's process) Iran. She failed to treat credibility in the round, and separated out her section 8 consideration. That was not the right approach.
5. At paragraphs [15] to [20] the judge set out the Appellant's journey to the United Kingdom. In paragraph [19] she addressed the likelihood of the Appellant being traced in Belgium. This was a serious error as there was no issue of the Appellant being at risk on return to Belgium. The only pertinence of mentioning her fear in Belgium related to her subjective fear of being found there. The judge had failed to consider the Appellant's belief that she may have been found in Belgium which led her to make a decision not to claim asylum there. The subjective and the objective basis for her fear had been elided together.
6. In relation to risk from her family, I was referred to paragraphs 2a and 2b of the skeleton. The judge had dismissed the risk posed by the Appellant's intended husband ("HH") in fairly short order, [22]. If the judge meant that the Appellant had not suffered violence at the hands of HH, this was correct, but it was not a basis for rejecting the risk of violence. The judge needed to go further to dismiss the risk. The judge erred by going no further than identifying that the Appellant had not suffered violence yet.
7. In relation to relocation, the judge had failed to have regard to the country guidance in relation to the social status of HH, the person she feared. I was referred to paragraphs 54, 186 and 187 of AM and BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC). A business enterprise could be a range of sizes, and more had to be done by the judge to identify the power and reach of HH. She had neglected the available evidence. It was not necessary for HH to have greater power in order to be able to locate her given that a trafficker, someone who did not have a particularly developed social status, was able to trace someone. Although there had been no finding that the Appellant had been trafficked, if a trafficker could trace someone, so could HH.
8. Mr. McVeety submitted that the point in relation to the application of the country guidance case was not relevant. Whether or not a criminal group

would be able to track the Appellant down was not relevant to her case. She feared her father, and maybe HH, an individual in the granite trade. It was not a question of a trafficking group tracking her down. AM and BM at [183] was dealing with internal relocation of trafficking victims, but she had fled of her own volition. The ability of a criminal gang to track someone down had no relevance here. She feared a granite salesman.

9. In relation to ground 1, there had to be something behind her fear of return and her fear was speculative. Her intended husband had not threatened her, and nothing had happened to her before. Nothing had happened to her in the two months prior to leaving Albania. There was no evidence that HH was the “Harrods” of granite salesmen. There was no objective evidence to show that a granite salesman with two shops in Albania had power and influence. The burden of proof was on the Appellant to show the influence. He was not a criminal, such as a trafficker, but a businessman.
10. In relation to section 8, he conceded that it was unfortunate when a judge started the credibility assessment with section 8, and this was not the best approach. However, it must be shown that this had infected the other findings. SM (section 8; Judge’s process) Iran held that section 8 could be treated as part of the assessment of overall credibility. The judge had not used section 8 in such a way that it undermined her overall credibility findings.
11. He accepted that Mr. Royston was correct in relation to paragraph [19] of the decision. This was not a claim in relation to Belgium. However, this could not be a material error. In paragraph [18] the judge had found that the Appellant was intent on coming to England. She had not been tracked down in Tirana or Brussels. There was no artificial separation of the judge’s credibility findings under section 8 and her other findings. She had given other reasons for not finding the Appellant credible. Her treatment of section 8 was not a material error when the decision was read as a whole.

Error of law

12. The judge commenced her findings in paragraph [15]. In paragraphs [16] to [18] she set out the Appellant’s immigration history and her journey to the United Kingdom. Paragraphs [19] and [20] state:

“I therefore find that the appellant had a firm objective of travelling all the way to the United Kingdom. She had no intention of staying in Belgium. I find that she could have claimed asylum in Belgium as it is a safe country. Further, for the reasons which I will set out below, I am not satisfied by her account generally and even applying a lower standard do not find it remotely credible that her family or intended husband in Albania would have been able to trace and find the appellant in Belgium.

Consequently the fact that: (i) the appellant did not apply for asylum in Belgium; and (ii) delayed for four days when she arrived in the United Kingdom both significantly undermine her credibility pursuant to Section 8 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004.

Her behaviour is not consistent with somebody who was allegedly fleeing for their life and in desperate circumstances. Such a person would have claimed asylum in Belgium. The appellant has failed to give a satisfactory explanation for failing to claim asylum in Belgium.”

13. The headnote to SM (section 8; Judge’s process) Iran states:

“Even where section 8 applies, an Immigration Judge should look at the evidence as a whole and decide which parts are more important and which less. Section 8 does not require the behaviour to which it applies to be treated as the starting-point of the assessment of credibility.”
14. The first part of the Appellant’s account which the judge considers is her journey to the United Kingdom, and therefore section 8. She considers this before considering the Appellant’s account of events in Albania. As accepted by Mr. McVeety, it is not the best approach to start with a consideration of section 8. However, it is the extent to which this has infected the other findings which is relevant. As is clear from SM (section 8; Judge’s process) Iran, section 8 should not be determinative, but should be considered in the round.
15. The judge has taken section 8 as her starting point. Looking at the way in which she has approached the rest of the evidence, I find that her section 8 findings have affected her treatment of the other evidence. She states in paragraph [20], prior to turning to consideration of the Appellant’s account, “Her behaviour is not consistent with somebody who was allegedly fleeing for their life and in desperate circumstances”. Similarly, the opening to paragraph [21] also indicates that the judge’s approach has been affected by her section 8 findings: “Turning to the Appellant’s alleged reasons for leaving Albania...”. At this point she has not considered the Appellant’s account of what happened in Albania, and has not given any consideration to whether her account is consistent or credible, and/or corroborated by background evidence.
16. Further, I find that the judge has erred in her consideration of the fact that the Appellant did not claim asylum in Belgium, [19]. She fails to identify that it is the Appellant’s belief that she could be traced in Belgium, her subjective fear, which is relevant to her failure to claim asylum. The judge was not required to assess whether objectively the Appellant was at risk in Belgium. Failing to consider the Appellant’s subjective fear of being found has affected the extent to which the judge finds that the Appellant’s behaviour falls under section 8, and the extent therefore to which her credibility is damaged as a result. In turn, her finding that the Appellant’s behaviour in failing to claim asylum in Belgium is not behaviour consistent with someone fleeing for her life affects her consideration of the core of the Appellant’s account. She has already decided that the reasons given are not credible on the basis of her finding that the Appellant’s failure to claim asylum in Belgium, and of delaying for four days in the United Kingdom, is not consistent with someone fleeing for her life.
17. The judge made other credibility findings in addition to the section 8 findings. However, I find that having addressed section 8 at the start, the judge’s findings in respect of section 8 affect her findings in respect of the

rest of the evidence. I find that she has failed to look at the evidence as a whole.

18. In relation to paragraph [32] and her fear of HH, the judge states that, as there is no evidence of HH being violent towards the Appellant, “the risk from him is speculative”. I find that it is not necessary for the Appellant to have suffered violence at the hands of HH in order for the risk to be present. I find that the judge’s findings, infected by her section 8 findings, mean that she has not given any weight to the Appellant’s claim that she was at risk of violence, and therefore she has failed to consider or give weight to the background evidence which may have corroborated the Appellant’s claim that she was at risk.
19. The extent to which HH would be able to locate the Appellant was relevant, and the judge addressed this in paragraphs [28] and [29]. It was not submitted before me that this was a case where the Appellant had been trafficked. AM and BM made findings about the ease of locating people in Albania. However, AM and BM was considering the ability of traffickers to locate people. While traffickers may not be of a high social class, it is also the case that traffickers are criminals, part of criminal gangs. It was not alleged that HH was a criminal, but a businessman. While I find that the judge should have done more than merely find that HH would not be able to find the Appellant, which findings are based largely on discounting the Appellant’s own evidence, HH’s situation as a businessman is not on a par with criminal traffickers.
20. I find that the judge erred in law in failing to consider the evidence as a whole, and in treating section 8 behaviour as the starting-point of her credibility assessment. I find that this error is material.
21. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party’s case to be put to and considered by the First-tier Tribunal. Given the nature and extent of the fact-finding necessary to enable this appeal to be remade, and having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.
22. I have made an anonymity direction.

Notice of Decision

23. The decision involves the making of a material error of law and I set it aside.
24. The appeal is remitted to the First-tier Tribunal for rehearing.

Signed

Date 11 May 2016

Deputy Upper Tribunal Judge Chamberlain