



IAC-AH-KRL-V1

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

Appeal Number: AA/06345/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 26 January 2016**

**Decision & Reasons Promulgated
On 11 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**MRS SEBIE DOGJANI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Collins (Counsel, instructed by Marsh & Partners Solicitors)
For the Respondent: Ms J Isherwood (Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant is a citizen of Albania. She appeals against a decision and reasons of the FtT (Judge Grice) promulgated on 2 November 2015 in which the appeal was dismissed on asylum, humanitarian protection and human rights grounds.

Background

2. The appellant has two dependent children born on 25 March 2013 and 18 October 2014 who are also Albanian nationals. She entered the UK in or about May 2012 and

claimed asylum on 23 February 2013. The basis of her claim was that she was a victim of domestic violence from family members, following her marriage in Albania to Mr Dogjani and having failed to enter into a marriage arranged by her family. There was a suggestion of a blood feud involving the two families in Albania however this issue was not actively pursued at the appeal before the FtT. Mr Collins accepted this claim as being somewhat speculative.

FtT findings and decision

3. In a detailed and lengthy decision and reasons the FtT found the core of the appellant's claim was wholly lacking in credibility [79 - 94].
 - a) There was a nine month delay before making a claim for asylum. Her explanation for the delay was rejected. [81]
 - b) The appellant's claim that she circulated amongst friends and ex-boyfriends upon whom she depended for financial support within the UK was generalised and lacking in detail and lacking in credibility. [82]
 - c) The appellant's account of the paternity of her younger son was not consistent and her explanation for the discrepancy in her accounts was not convincing. [83]
 - d) The appellant's account that she last met her husband in April 2012 was not consistent with the claimed date of birth of their son, some eleven months later. [84]
 - e) The FtT found the appellant's explanation how she was able to obtain a UK birth certificate for her son without reference to his father being present, was inherently unlikely. [85]
 - f) The FtT found the appellant's evidence in relation to her inability to contact her husband since coming to the UK wholly unconvincing in the circumstances. [86]
 - g) The FtT found her explanation for his inability to accompany to the UK lacking in credibility. [87]
 - h) The FtT did not accept that the appellant had been abandoned by her husband in the light of the length and history of their marriage and relationship. [88]
 - i) The FtT found it incredible that the appellant conducted a clandestine relationship with her husband in the circumstances as claimed. Further there was no marriage certificate produced. [89]
 - j) At [90] the FtT referred to the frequency of forced marriages occurring in rural areas of Albania with reference to page 23 of the appellant's bundle. The FtT specifically found that this background material did not lend support to the appellant's claim.
 - k) The FtT found the appellant's account of escape from her home and meeting up with her husband to go to Kosovo, lacking in credibility having

considered the same in the context of her claim that she had brought the family into dishonour by her actions and which had led to physical abuse of her. The FtT did not find this to be plausible and/or further in the context that she left the house some ten days after the claimed assault alone on the pretext of visiting her cousin. [91]

l) The evidence as to a blood feud was pure speculation. [92]

m) Her account of the reasons for obtaining a passport in November 2011 (five months before she was told that her arranged marriage was imminent) was unconvincing. [93]

o) At [94] the FtT concluded “looked at in the round, I find the appellant’s international protection claim completely lacking in credibility.

Grounds of Application for Permission

4. The appellant argued that there were a series of material errors of law which individually and collectively rendered the decision unsustainable.

Ground 1

5. The FtT found the appellant’s claim completely lacking in credibility based on a “wholesale adverse finding largely predicated on the appellant’s actions since her arrival in the UK” [81-88] and the FtT failed to assess that claim in the light of the background material other than at [89-93].

Ground 2

6. The FtT failed to consider the appellant’s account in the context of her being from the rural north (where Kanun law predominates) and without regard to the country guidance in **EH (blood feuds) Albania CG [2012] UKUT 00348 (IAC)** and the most recent Operational Guidance Note (“OGN”) for Albania dated 14 October 2014. At section 3.20 OGN reference is made to the pervasive and endemic nature of violence towards women, particularly from family members and the limited protection available to victims. The FtT made no specific finding as to the claim that she was seriously assaulted by family members and failed to take into account that she had scars on her chin and forehead. The appellant has two children who will be perceived as illegitimate by her family. This is a risk factor following **AM and BM (Trafficked women) Albania [2010] UKUT 80 (IAC)**.

Permission to Appeal

7. Permission was granted by FtT Judge Osborne, who considered that the grounds were arguable in the light of the appellant being from Kukes, and the FtT’s failure to consider **EH** and the recent background material. FtT Judge Osborne acknowledged that the decision and reasons were otherwise detailed and careful but the FtT’s failure to refer to the pertinent country guidance case and recent background evidence undermined the substantive findings of fact to the extent that they amount to an arguable material error of law.

Error of Law Hearing

Submissions

8. Mr Collins submitted that the essence of the appellant's claim was her fear of domestic violence from her family. He conceded that the blood feud claim was too speculative and was not pursued.
9. Mr Collins further accepted that the findings as to credibility were open to the FtT to make. However the FtT erred by failing to take as its starting point the evidence of the endemic nature of domestic violence particularly in the north of Albania. The FtT engaged in some assessment of the background evidence but this was insufficient. No reference was made to either the Operational Guidance Note nor to any of the relevant country guidance cases. Mr Collins acknowledged that neither **EH** nor **AM and BM** were specifically "on point" as the appeal did not involve a blood feud nor trafficking. However he argued the risk factor for example, the presence of illegitimate children, featured. The factual nexus was arguably consistent with the background material and in the light of the FtT's failure to consider the same, this amounted to a material error of law.
10. Ms Isherwood relied on the Reasons for Refusal Letter. It was accepted that the appellant was from Albania. No specific acceptance had been made that she was from the north. There was no medical evidence as regards scarring. The adverse credibility findings were sustainable on the evidence before the FtT which made the appellant's challenge immaterial. All of the findings made by the FtT at [81-86] were entirely open to it to make. It was clear that the FtT considered some of the background material as reference is made to it in the appellant's bundle at [90] and the FtT specifically stated that the appellant's claim did not fall in line with that material. Having regard to the submissions made by both representatives before the FtT and the contents of the Reasons for Refusal Letter, it was clear that the FtT had considered the background evidence of domestic violence. The FtT did not accept any aspect of her claim at all.
11. Mr Collins responded by confirming that the appeal proceeded on the basis that the appellant was from Kukes. He reiterated the argument that the FtT failed to properly engage with the starting point as submitted by Mr Harding at the FtT. The FtT must assess credibility in the context of the background material. There was arguably uncertainty as to whether or not this had been done.

Discussion and Decision

12. At the end of the hearing I reserved my decision, which I now give with my reasons. I find that there was no material error of law in the decision and reasons of the FtT in dismissing the appellant's claim for international protection. The claim made by the appellant was that she had suffered from abuse and domestic violence from her family because she had entered into a marriage against their wishes and had not entered into a marriage arranged by family members. Although there was some suggestion that a blood feud had arisen between the appellant's family and the

family in the proposed arranged marriage, this issue was not actively pursued on behalf of the appellant. In any event the FtT found the claim to be based entirely on speculation. Mr Collins confirmed that the appellant's claim was pursued only on the basis of the fear of domestic violence.

13. Whilst acknowledging that the FtT focused in the main on events since coming to the UK and making adverse findings of credibility thereon, it cannot be said that the FtT did not consider the claim in the light of the background material at all. In a very thorough and detailed decision and reasons the FtT set out all of the evidence and submissions. It is clear that the FtT was provided with the relevant background evidence as it referred to the same in the summary of the representative's submissions. I am satisfied that the FtT made reference to and took into account the background material at [90] and specifically considered the appellant's claim in the context of background material concerning forced marriages and violence towards women. I conclude that the FtT's assessment of credibility of the claim was reached having regard to the internal and external consistency of the evidence. Having regard to the decision and reasons as a whole, I am satisfied that the FtT not only made findings of fact that were sustainable on the evidence adduced, but also having regard to the background evidence of domestic violence towards women. As was conceded by Mr Collins there was no country guidance case on point and whilst the FtT may have been assisted in part by reference to EH and AM and BM, this appeal was not a case involving a blood feud or a trafficked woman.

Decision

14. Accordingly I find no material error of law in the decision which shall stand.

Signed

Dated 8.2.2016

GA Black
Deputy Upper Tribunal Judge G A Black

No anonymity order.

TO THE RESPONDENT
FEE AWARD

No fee award. The appeal is dismissed.

Signed

Date 8.2.2016

GA Black
Deputy Upper Tribunal Judge G A Black