



IAC-HW-AM-V1

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

Appeal Number: PA/01835/2015

THE IMMIGRATION ACTS

Heard at Field House

On 5th May 2016

**Decision & Reasons
Promulgated**

On 13th May 2016

Before

UPPER TRIBUNAL JUDGE REEDS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

DH

(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms K Pal, Senior Presenting Officer

For the Respondent: Mr Harding, Counsel instructed on behalf of the Appellant

DECISION AND REASONS

1. An anonymity direction was granted by the First-tier Tribunal and I find that it is appropriate to continue the order. Consequently under Rule 14, 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. This

direction applies both to the Appellant and to the Respondent and failure to comply with the direction could lead to contempt of court proceedings.

2. The Secretary of State appeals against the decision of the First-tier Tribunal (Judge Malins) who, in a determination promulgated on 14th March 2016 allowed her appeal against the decision of the Secretary of State of 7th October 2015. Whilst is the Secretary of State's appeal, I intend to refer to the parties as they were before the First-tier Tribunal for ease of reference.
3. The background can be summarised briefly. The Appellant arrived in the United Kingdom on an unknown date. She stated that it was in or about August 2013, having entered illegally having travelled through Italy and France and then into the United Kingdom with the help of an agent. On 27th March 2015, she made an appointment and subsequently made an asylum claim on 8th April 2015. It was at the screening interview that she provided information which supported an account of being a possible victim of trafficking.
4. On 9th April 2015 the Appellant's case was referred to the Competent Authority to consider there were reasonable grounds to believe that she was a victim of trafficking. On 15th April 2015 the Competent Authority informed her that there were reasonable grounds for believing that she was a potential victim of human trafficking. As it is well-established, there is a two stage process for identifying victims of trafficking; the reasonable grounds and the conclusive ground stage. The first stage is an initial filter before the conclusive decision is taken. The reasonable grounds test considers the statement "I suspect but cannot prove the person is a victim of trafficking" whereas the second stage is the conclusive grounds decision and the standard of proof is the balance of probabilities.
5. In a decision of 25th September 2015 the Competent Authority having considered the circumstances of the Appellant's case concluded that there were not sufficient grounds on the balance of probabilities to believe that she was the victim of trafficking. The reasons are set out in that accompanying letter. Before that decision was made, the Appellant was interviewed in detail in connection with her asylum claim on 16th July 2015.
6. The First-tier Tribunal Judge set out the factual basis of the Appellant's claim at paragraph 7 of her decision. In the judge's findings of credibility the judge found her "devoid of credibility" and rejected "every part of the Appellant's account of events prior to her leaving Albania and ultimately claiming asylum in the UK." However the judge found that it was credible that she had a trafficker who put her into prostitution in London but could make no finding as to what had happened in Albania and to how and why she had left Albania or in what circumstances (paragraph [13.3]). As to the trafficking issue, the judge found at [14.2] that the journey was arranged by a man named T and that she had travelled with a couple with whom she had probably been told not to identify and that she had arrived clandestinely in the UK and that she had been exploited in prostitution

either by T or another. The judge considered the issue of returnability and at paragraph [16.2] found her to be in danger of re-trafficking. As to the asylum claim she found that she had not shown a fear of persecution for a Convention reason either emanating from her father nor any other person that she was to marry but that she would be at risk of Article 3 mistreatment. Thus the judge allowed the appeal.

7. The Secretary of State sought permission to appeal and on 5th April 2016 First-tier Tribunal Judge Landes granted permission.
8. At the hearing on 5th May, I heard submissions from both parties, which have noted in my Record of Proceedings and where relevant are incorporated into my discussion on whether or not there is an error of law disclosed in the determination of the First-tier Tribunal.
9. The first issue relates to the findings of fact made by the judge and the submissions advanced by the Secretary of State that the judge had made inconsistent findings relating to the factual circumstances of the Appellant's claim, which ultimately affected her consideration as to whether she was a victim of trafficking, the issue of sufficiency of protection and risk of re-trafficking.
10. The judge's findings are set out at paragraph [13.1]-13.3)]. In respect of those findings the judge stated "The above findings, take in every part of the Appellant's account of events prior to her leaving Albania and ultimately, claiming asylum in the UK. Upon the entire account, I find her devoid of credibility." The earlier findings make reference to the asserted claim to be at risk of a forced marriage, the relationship with a man called T and how he helped her to travel to the United Kingdom, the account of her journey to France, how she managed to leave Albania without her parents' consent, and her escape from the house where she had lived in the United Kingdom was also found not to be credible and also the claim being further undermined by the delay in claiming asylum of one year and seven months. Thus the judge found her to be "devoid of credibility". The judge went on to state at paragraph [13.2] that notwithstanding that, the judge found her to be a vulnerable young woman who spoke no English with no family or means of support and a very small child (that was born on 24th April). The judge found that it was credible that she had a protector/agent/trafficker who put her into prostitution. At paragraph [13.3] the judge went on to state:

"It is not for me to speculate as to what actually happened in Albania and in any event, I have no evidence upon this from any source. I have however, made findings in paragraph 13.1 above, which leave a large question mark over how and why the Appellant left Albania. In all the circumstances, it would seem likely that the Appellant's family sold off their eldest child and that instructions were given to her to speak of a threatened forced marriage and help from a boyfriend (T) with which she did her best to comply, in trying circumstances. But I repeat, I can make no findings upon any of this."

11. At paragraph [16.1] the judge also makes reference to paragraph [79] of the country guidance decision of **AM** and the issue of families where abuse had occurred and stated (“as was probably the case here”). At [16.4] the judge found that she had no fear of persecution emanating from her father nor of any person who she was to marry.
12. The Appellant’s factual account concerning a forced marriage, being trafficked into the UK by a man called T, the process of her trafficking, the details of her escape in the UK and the fact that she had failed to claim asylum and the delay that was involved, were all matters taken into account by the judge and were rejected by the judge (see findings at [13.1][a]-[e]). Thus I have already set out, the judge considered that those findings took into account every part of the Appellant’s factual account of events prior to leaving Albania but also “ultimately claiming asylum in the UK”, because those findings also concerned her account of being effectively imprisoned and her escape.”
13. However at [13.2] the judge found that she had a protector/agent and trafficker who had put her into prostitution and the judge set out the alternative basis upon which she said the Appellant might have left Albania in that paragraph. Whilst Mr Harding on behalf of the Appellant referred to those findings as alternative findings, it is plain that the judge at that point made it clear that she could not speculate as she had no evidence and expressly said at paragraph [13.3] that she made no findings upon any of those issues.
14. The finding made at paragraph [14.2] was that the Appellant was trafficked to the UK stating:

“Regardless of my credibility finding, there is no basis to doubt that the Appellant’s journey was arranged by T, or that she had travelled with a couple whom she had probably been told not to identify or that she had manifestly arrived clandestinely in the UK. I find that the Appellant had been exploited in prostitution – either by T, or by another Albanian man (this sector of the European Community is particularly adept in this field) and that she managed ultimately, to get away.”
15. Mr Harding has submitted that there is nothing inconsistent in the findings of fact set out by the judge as the judge set out what she found to have happened in the UK. In essence he submits that there was a discrete finding made by the judge which was open to her on the evidence. However in my judgment the findings at paragraph [14.2] are inconsistent with the overall findings of fact. The findings at [14.2] set out that the judge found that there was no basis to doubt that the Appellant’s journey was arranged by T or that she travelled with a couple (and identified those circumstances). The judge went on to consider that she had been exploited in prostitution by T or another Albanian man and that she had managed to “get away”. However that is inconsistent with her findings that the Appellant’s account was “devoid of credibility” as to what had happened in Albania, in that she did not believe how she had got to the UK or as the judge had stated “ultimately, claiming asylum in the UK” which

included the lack of credibility shown by her delay in claiming asylum but also the account that she had given of her escape. The findings also included her relationship with the man T and the lack of credibility in that respect and the couple with whom she had travelled to the UK.

16. Furthermore, I am satisfied that the inconsistent findings of fact infected her conclusions reached upon the risk on return. The judge considered the issue of “returnability” at paragraph [16] and cited paragraph [79] of **AM** (relating to families) and paragraph [42] relating to the availability of the one shelter identified by the Tribunal and concluded at paragraph [16.2] “The proposition that the Appellant would be in danger of re-trafficking is also supported by the objective evidence in this appeal.” At paragraph [16.4] the judge stated that she had not made out her asylum claim because she had not demonstrated a fear of persecution emanation from her father nor of a person she was to marry. However at [16.3] the judge found her to be at risk of Article 3 mistreatment.
17. At [16.2] the judge fails to give reasons as to why the Appellant would be in danger of re-trafficking. Whilst Mr Harding submits that the judge’s reference to the conclusion being “supported by the objective material” and when read together with paragraph [11] where the judge set out that she had considered the written evidence, is sufficient, I do not agree. As Ms Pal submitted there was an abundance of material in the Appellant’s bundle concerning this issue which was relevant to the analysis of the risk of re-trafficking and required consideration by the judge. The objective material consisted of a Country Information Guidance Report upon trafficking in Albania (dated 9th September 2015 found at pages 45 to 67) and also the Country Information Guidance for Albania dated August 2015 (pages 68 to 100 of the Appellant’s bundle). That material made reference to the specific evidence relevant to the issue of sufficiency of protection (see [1.19]-[1.114]) and at [1.1.15] a list of particular circumstances of the individual that was relevant to the issue of sufficiency of protection was set out. The updated report dated 9th September 2015 provided a further overview of the issue of protection, the legislation and at paragraph [2.6], importantly, the assistance to victims of trafficking which made reference to the US Department of State Report and at [2.6.11], the information provided concerning a number of shelters available to those upon return.
18. None of that material was considered or given any analysis by the judge in reaching the conclusion that she was at risk of re-trafficking. I do not consider that it is sufficient to state that the danger is “supported by the objective evidence” when the objective evidence was not consistent and required to be analysed alongside and along with the particular factual circumstances of the Appellant. None of the material was considered or given any analysis by the judge in reaching the conclusion on the issue of re-trafficking and she failed to identify the objective material that she found to be consistent with that. Mr Harding was not able to identify the objective material that she purportedly relied upon.

19. The failure in my judgment is both relevant and material. The decision of **AM** and **DM** (the country guidance relied on by the judge) identified at paragraphs [168]-[174] the issues a victim of trafficking might face. At paragraph [181], the Tribunal considered that the central issues focused on whether or not a victim of trafficking would face a real risk of persecution from her former traffickers because they escaped or was at risk of being re-trafficked and whether there is a sufficiency of protection for them. The first issue is “fact specific”. When considering the second issue, the Tribunal noted that there were laws and initiatives to combat trafficking and concluded that the steps taken by the Albanian authorities were sufficient to meet the standard of sufficiency of protection for re-trafficking from “new traffickers”. However when considering the issue of whether or not the victim of trafficking has a sufficiency of protection from her “former traffickers” should they wish to re-traffic her, or harm her, that was an issue which was “fact specific”.
20. The judge’s assessment on the re-trafficking issue makes no analysis of the fact specific matters relevant when considering the issues identified by the Tribunal in the country guidance decision of **AM** whether being re-trafficked by new traffickers or by former traffickers. The reference made by the judge to paragraph [79] of **AM** relates to the issue of families where the judge records “the families would be contacted in any event despite the case that trafficking often was from families where abuse had occurred (as is probably the case here)...” Therefore when considering risk on return and the risk of re-trafficking the judge appeared to place weight on the fact that she has a family where abuse had occurred and relevant to risk whereas earlier the judge had stated at paragraph [13.3] that she could make no findings concerning the family and at [16.4] expressly found that the Appellant had no fear emanating from her father.
21. Furthermore when considering the issue of sufficiency of protection the judge referred to paragraph [42] of **AM** (as cited) but that was insufficient when there was the other material as identified earlier in the determination that was relevant to the issue and because the judge had not provided any analysis as to why the Appellant would be at risk of re-trafficking. I therefore consider that even if Mr Harding is right that the finding of fact that she had been trafficked was a discrete issue and notwithstanding that the Appellant was devoid of credibility in relation to the earlier findings, those other issues still remain and demonstrate in my judgment material errors of law.
22. The last issue is not one that was either raised in the Respondent’s grounds or in the Rule 24 response filed on behalf of the Appellant. It relates to the judge’s failure to consider the new country guidance decision of **TD and AD (Trafficked women) CG [2016] UKUT 00092**. Whilst neither party referred to this in their written material, Mr Harding properly raised it and it is a “Robinson obvious” point.
23. The judge heard the appeal on 8th February 2016 and the country guidance decision was promulgated the next day on 9th February. The

judge's decision, however, was not promulgated until 14th March 2016 and therefore was available before promulgation. Even if it could be said that the judge was "fixed" with notice of the country guidance decision and thus was in error of not applying it as Mr Harding submits, there are cases and I consider this is one, which fall into the category where the proper course is to either recall the parties to provide further oral submissions/additional oral evidence or to invite the parties to provide further submissions in writing. Such an approach would satisfy the requirements of procedural fairness and would enable both parties to provide their submissions and evidence on relevant issues. There will be cases in which it would be open to a judge to consider the country guidance without following that approach. However as I have stated this appeal was not such a case because it included consideration of further issues and further argument that relates to the particular factual circumstances of this Appellant.

24. Mr Harding submitted that if the Tribunal had applied **TD and AD** that the outcome would have been the same. When asked to provide submissions to support that argument, he submitted that the bolded paragraphs given in that decision would support her claim. I do not agree. It seems to me that in view of the lack of consistency as to the findings and even it was accepted that the judge had made a discrete finding that she had been trafficked, as contended by Mr Harding, the conclusions as to risk on re-trafficking required the judge to make a full analysis in the terms that I have set out earlier, which in my judgment was lacking in this determination.. The old country guidance decision and the new country guidance decision both make it plain that the victim's particular circumstances must be considered and that in relation to reception and reintegration programmes, whether it was unreasonable must be determined on a case-by-case basis and that a careful assessment of all the circumstances apply (see headnotes ([c] and [f])). Furthermore as to the risk of re-trafficking the Tribunal identified at [e] that whether that risk existed for an individual claimant would turn in part on the factors that led to the initial trafficking and on her personal circumstances, including her background, age and her willingness and ability to seek help from the authorities. For a proportion of victims of trafficking, their situations may mean that they are especially vulnerable to re-trafficking, or being forced into other exploitative situations. At [h] the particular circumstances add a further factor including the availability of support networks. Arguably the judge's findings as they currently stand do not assist in reaching conclusions on all of those issues thus I am satisfied that the decision demonstrates material errors of law.
25. As for remaking the decision, I consider that the submissions made by Mr Harding are right when he submits that if an error of law is found that the correct course would be to remit the appeal to the First-tier Tribunal with no preserved findings, who would be required to make full findings of fact upon the particular circumstances of this Appellant and apply the new country guidance to those findings of fact as made.

26. Therefore I set aside the decision of the First-tier Tribunal and remit the appeal to be reheard before the First-tier Tribunal at Hatton Cross by way of a fresh hearing as set out above.

Signed

Date 11/5/2016

Upper Tribunal Judge Reeds
Anonymity Direction:

Consequently under Rule 14, 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. This direction applies both to the Appellant and to the Respondent and failure to comply with the direction could lead to contempt of court proceedings.