



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

Appeal Numbers: PA032692015  
AA077982015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5 May 2016**

**Decision & Reasons Promulgated  
On 9 June 2016**

**Before**

**UPPER TRIBUNAL JUDGE JORDAN**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**[J P]  
[M P]**

Respondents

**Representation:**

For the Appellant: Mr T. Melvin, Home Office Presenting Officer

For the Respondents: Mr A. Burrett, Counsel instructed by Ozoran Turkan Solicitors

**DECISION ON ERROR OF LAW**

1. The Secretary of State appeals against the decision of First-tier Tribunal Judge Rowlands promulgated on 4 March 2016 following a hearing at Harmondsworth on 5 February 2016. He made two written decisions and they were in respect of [JP] and his wife. It was probably unnecessary to have made two decisions but he did so and it clearly demonstrates that he was looking at each case separately.

2. The husband was born on [ ] 1982, his wife on [ ] 1996. She is aged 20 and the immigration history is set out in paragraph 2 of the determination. He was removed from, or at any rate left, the United Kingdom in January 2013 and he and his wife returned to the United Kingdom using a false Italian identity card and it was at that point that they claimed asylum. They are (it appears to be accepted) Muslims and Gorani from the Kukes district. Their claim was that, as far as the husband is concerned, he had been terrorised by a hoodlum called [S] who had both threatened him and used violence against him. As a result of that, he claimed that he had left Albania.

3. The evidence apparently from Christine Enfield who was a specialist foster carer for Solihull Social Services, who had had the wife in her care, was that:

“Its fair to say that she constantly demonstrated the most severe distress I have ever encountered in any young person in my care. It was quickly apparent that this was due to her separation from the man she considered her husband”.

Eventually funds were made available to buy a phone and she was able to contact her family who put her in touch with her husband and they were reunited. It was said by Ms Enfield that the wife was not mentally ill but traumatised at the separation from [JP].

4. So when the claim was considered by the judge in relation to the husband the judge concluded:

“So far as this Appellant is concerned I do not believe that if his claim was to be considered simply in its own right, he would have been able to establish that he had a genuine claim for asylum or humanitarian protection. I have dealt in some detail with his wife’s claim and her own mental health state and having reached the conclusion that I am satisfied she is entitled to asylum on the basis of being the victim of a sexual assault and that she would suffer unduly if she were to be returned, then I am satisfied that it is also appropriate for this Appellant to be allowed to remain with her and his daughter.”

5. By no stretch of the imagination could that be a claim in which a Convention reason has been identified and the judge then went on to say it was not necessary either to make any findings in relation to humanitarian protection or in relation to human rights. It is plainly a decision that is wrong in law and I set it aside. It does not provide any proper reasoning for the finding that the husband has established that he is at risk of harm or at risk of persecution for a Convention reason.

6. As far as the wife’s decision is concerned, very much the same considerations apply. The Judge said,

“I cannot ignore the overwhelming evidence from health professionals that she is suffering a significant amount of trauma from her past experiences”.

I doubt whether that was an adequate gloss on the evidence bearing in mind what the judge had recorded in relation to the evidence of Christine Enfield. What Christine Enfield had said is that she had been traumatised because of her separation from her husband, not that she was currently traumatised. Nevertheless, on the basis of that finding, he was satisfied that her psychiatric condition was pivotal as far as the claim was concerned. In paragraph 42 the judge said:

“I am satisfied that, were it not for her psychiatric condition, it would be reasonable to expect them to return to Albania”.

In those circumstances it seems to me the asylum claim was bound to fail. The Article 3 claim, which is not otherwise identified, was allowed in the wife’s appeal although it is not properly reasoned out.

7. I considered whether or not this was a case where in view of what the findings of fact that the judge had apparently made, there being no counter notice, it was simply a case where the claim should be re-made by me but bearing in mind the paucity of reasons that have been put forward for any of the findings that were made by the judge and bearing in mind what Mr Burret on behalf of the applicant says, namely that he was advancing a claim which the judge did not properly address in the decision, I have come to the conclusion that the correct approach is to have the case re-made from scratch with no findings of fact preserved. In those circumstances I direct the decision is re-made in the First-tier Tribunal.

#### NOTICE OF DECISION

The First-tier Tribunal made an error on a point of law and I set aside the decision.

The decision is to be re-made in the First-tier Tribunal. No findings of fact are preserved.

No anonymity direction is made.

ANDREW JORDAN  
JUDGE OF THE UPPER TRIBUNAL  
5 May 2016