



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01835/2015

THE IMMIGRATION ACTS

Heard at Field House
On 17 May 2017

Decision & Reasons Promulgated
On 8 June 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

DH
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Collins of Counsel, instructed by Sentinel Solicitors
For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Pedro promulgated on 24 January 2017 in which he dismissed the Appellant's appeal on asylum grounds, on humanitarian protection grounds, and also on human rights grounds.
2. The Appellant is a citizen of Albania who at the time of today's hearing is just a few days short of her 21st birthday. Her personal details are a matter of record on file: in keeping with the anonymity order that has been made in these proceedings - and which I continue today - I do not rehearse them here.

3. The Appellant claims to have left Albania on 27 August 2013 by ferry for Italy. She then passed into France before arriving in the United Kingdom by boat at the end of August 2013. It is her case that she entered illegally.
4. On 27 March 2015 the Appellant made an appointment in order to claim asylum; her claim was formally recorded as having been made on 8 April 2015, on which day the Appellant also underwent a screening interview. In due course the Appellant was interviewed substantively in respect of her claim. Further representations were also made in writing on 20 July 2015. On 7 October 2015 the Respondent refused the Appellant's application for protection for reasons set out in a 'reasons for refusal' letter ('RFRL') of that date. For completeness, it should also be noted that on 25 September 2015 there was a decision to the effect that the Appellant was not a victim of trafficking.
5. The Appellant, in support of her application for asylum and also in support of her appeal, gave a narrative account of events that is summarised at paragraphs (a) to (o) of the RFRL of 7 October 2015. The Appellant's account is also summarised at paragraph 5 of the Decision of the First-tier Tribunal to the effect that the Appellant claimed that she feared persecution upon return to Albania at the hands of her own family - and in particular her father - as well as the family of a man named 'B' to whom she had been promised in marriage.
6. The history of the appeal process in this case is extensive. The Appellant's appeal was first heard by First-tier Tribunal Judge Malins, who allowed the appeal with reference to Article 3 of the ECHR in a decision promulgated on 14 March 2016. However, the Respondent challenged that decision and in due course the decision of Judge Malins was set aside by a decision of Upper Tribunal Judge Reeds promulgated on 13 May 2016.
7. In such circumstances the appeal came before First-tier Tribunal Judge Pedro on 27 October 2016 to make the decision afresh with all issues at large. Judge Pedro's decision is signed on 23 January 2017 and was promulgated on 24 January 2017. It may be seen that the decision was promulgated some few days short of three months after the date of hearing.
8. The Appellant applied for permission to appeal to the Upper Tribunal which in the first instance was refused by Designated First-tier Tribunal Judge Macdonald on 21 February 2017. However, Upper Tribunal Judge Gill granted permission on 7 April 2017 on two grounds. One ground related to the delay in promulgating the appeal. The other ground related to the arguability of whether the credibility assessment had been made without reference to background material, in particular in respect of domestic violence. A third line of challenge in relation to the circumstances surrounding the Appellant's account of having been trafficked into the UK was rejected as not revealing an arguable error of law.

9. The delay point may now be dealt with relatively briefly. Mr Collins does not seek to pursue this line of challenge in light of the fact that there is a detailed Record of Proceedings prepared by Judge Pedro on the court file. It is clear that that Record of Proceedings is contemporaneous: it sets out the exchange of questions and answers during the live evidence as well as recording the submissions made by the representatives, and is signed at the bottom with a note "*decision reserved*" and the date of the hearing given.
10. In any event in this context, bearing in mind the requirement to demonstrate a nexus between any delay and any defect in the evaluation of the case, it is to be noted that the grounds of challenge have not sought in any way to suggest that there was any misunderstanding by the Judge of the evidence presented by the Appellant, or that any evidence had been omitted from the consideration of the Judge. Mr Collins in those circumstances, in my judgment, is realistic and sensible in declining to pursue this aspect of the grounds of challenge.
11. The remaining ground of appeal is that set out at paragraph 6 of the Appellant's Grounds in these terms:

"It is clear from paragraph 16 of the Determination that the FTT Judge did not find the Appellant to be "...a credible witness". When one analyses the FTT Judge's rejection of that part the Appellant's account relating to fear of her father for not entering into the marriage he arranged for her as well as fear of the man [B], whom she rejected, the FTT Judge signally fails to take into account the background material before him indicating the pervasive and endemic nature of domestic violence against women cf in particular the CIG 'Women facing domestic violence' May 2016. In effect the FTT Judge has made his findings in a vacuum. Further, the FTT Judge has also failed to factor into his assessment of this part of the claim the fact that the Appellant is from Tropoje in the rural far north of Albania where Kanun law predominates and where the general situation facing women is even bleaker than the larger cities."

12. Mr Collins acknowledged that the reference in the Grounds as drafted to a CIG of May 2016 was in fact in error. Whilst it appears that it had been the intention of the Appellant's representatives to file such a document before the First-tier Tribunal - a document that had come into existence between the hearing before Judge Malins and the *de novo* appeal before Judge Pedro - it appears that no such document was ever filed before the First-tier Tribunal. To that extent the Appellant cannot rely upon a submissions that the First-tier Tribunal Judge failed to have regard to the particular document cited in the Grounds.
13. Nonetheless Mr Collins identifies that there were materials before the First-tier Tribunal Judge that related to domestic violence, and pursues his submissions as if those materials were the ones identified in the grounds of appeal.
14. In this regard my attention has been directed in particular to the following materials:

(i) A passage in the U.S. State Department Report on human rights practices in Albania for 2014, which is in these terms: *“Domestic violence against women including spousal abuse remained a serious problem”*, followed by a number of statistics. (The relevant passage may be found at page 18 of the Appellant’s bundle that was before the First-tier Tribunal.)

(ii) An Operational Guidance Note produced by the Home Office from October 2014 in respect of Albania and in particular the paragraphs starting at paragraph 3.20 in relation to victims of domestic violence. The concluding paragraph of that section is paragraph 3.20.12, which is in these terms:

“There is societal discrimination and violence against women in Albania, particularly in the North of the country and women who are unemployed, less educated and living in rural areas are more vulnerable to violence. However, the government has passed legislation that outlaws discrimination against women and women are not excluded from any employment or occupation. In addition there are also a number of NGOs who work to promote women’s rights and campaign against discrimination and violence. For a claim to succeed on grounds of domestic violence the onus would be on the applicant to demonstrate not only that they will face on return persecutory or inhuman or degrading treatment but also why they would be unable to access effective protection or alternatively relocate elsewhere in Albania to escape localised threats from members of their family but the reasonableness of internal relocation must be assessed on a case by case basis taking full account of the individual circumstances of the particular claimant.”

15. It is to be emphasised that in the context of the submissions pursued before the Tribunal today the focus is on the relevance of the background or country information to the assessment of the Appellant’s credibility rather than *per se* as to whether she should have succeeded on her appeal on the basis of being at risk of domestic violence in the future. Although necessarily that was an element of her case, the focus for the purpose of the ‘error of law’ analysis is the role which country information plays in the evaluation of a narrative account.
16. So far as Judge Pedro made reference to the materials that had been filed before the Tribunal, Mr Collins argues that these are essentially generic references and do not descend to a necessary and finer analysis of the substance of those materials, and to that extent the Judge’s approach was not adequate in the context of his evaluation of the Appellant’s credibility.
17. Mr Collins submits that Judge Pedro focused on discrepancies and inconsistencies in the Appellant’s account, and not that her claim was supported in its genus in that her account is plausible against the background of endemic violence against women in Albania and more particularly in the north of Albania.
18. In the premises I make two observations in respect of those submissions. The first is that plausibility, whether that be set against the background country information or by reference to other materials or experiences, is not inevitably to be equated to a

credible or truthful account. The plausibility of an account may, in an overall or 'in the round' consideration, be undermined by other aspects of the account such as inconsistencies. Secondly, no challenge is made to the analysis of the Judge that relates to discrepancies and inconsistencies. In this latter context it may be recalled that in the 'permission to appeal' decision Judge Gill considered Judge Pedro's evaluation and rejection of the Appellant's account in respect of her claim to have been 'trafficked' essentially sound over the course of paragraphs 23, 24 and 26-28 of his Decision.

19. The Secretary of State has filed a Rule 24 response dated 26 April 2017, essentially pleading that the Judge has set out comprehensive reasons for findings in respect of inconsistencies in the Appellant's account and has adequately reasoned the adverse credibility conclusion reached.
20. It is against these respective arguments, and the background I have set out in brief summary above, that I turn to a consideration of the decision of First-tier Tribunal Judge Pedro.
21. It is manifest that the Judge has set out in very considerable detail an analysis of all aspects of the Appellant's personal narrative account, as advanced both in the substance of her application and over the course of her oral evidence. In this regard I echo the observations made by Judge Gill in granting permission that the Judge is a very experienced Judge, and add that in my judgement it is clear that he has brought that experience to bear on scrutiny of the Appellant's case.
22. At paragraph 7 of the Decision the Judge summarises briefly the materials that had been filed before him on behalf of the Appellant and then at paragraph 10 states that: *"In deciding this appeal and for the avoidance of any doubt I confirm that I have carefully considered all of the documentary evidence before me, including... all additional documents submitted by or on behalf of the appellant and the respondent."*
23. The Judge sets out his conclusions from paragraph 16 of the Decision. The opening sentence of paragraph 16 is this: *"I did not find the Appellant to be a credible witness."* The Judge continues: *"On the totality of the evidence before me I find that the credibility of the Appellant's claim to asylum is seriously undermined. I shall now set out in more detail my reasons for having reached this conclusion."*
24. Paragraph 17 commences with a summary of the Appellant's case and then continues in this way:

"However, on the totality of the evidence before me I do not accept that the Appellant has given a truthful account of alleged past events in Albania or events that are alleged to have occurred following her arrival in the United Kingdom. I find that the Appellant has fabricated her claim to asylum and that she has done so in an attempt to prolong and regularise her stay in the United Kingdom after having entered the United Kingdom clandestinely and having remained here unlawfully. I do not accept that this

Appellant has at any time been in need of international protection or that she is in any such need at the present time."

25. It is clear that that is a wholesale rejection of the Appellant's narrative account in all material respects, and not merely those that might be said to relate to the claimed violence - and the risk of future violence - from her father, her family and the man to whom, it was said, she had been promised in marriage.
26. At paragraph 18 the Judge cautions himself as to potential vulnerabilities as an element of his consideration of the Appellant's account. He says this:

"In reaching the above conclusion I have take into account inconsistencies in the various claims made by the Appellant as well as an underlying lack of credibility. Against this I have borne in mind that someone who has undergone traumatic experiences may give different accounts on different occasions and I have also taken into account the lower standard of proof applicable to asylum claims. Notwithstanding this I find that the inconsistencies and lack of credibility in the account given by the Appellant and to which I shall refer in this decision do seriously undermine the credibility of the Appellant's claim to asylum and the past events both in Albania and in the United Kingdom on which it is based."

In my judgment this is a hallmark of a careful approach recognising the potential vulnerability of a person, particularly one claiming, as the Appellant had claimed, to have undergone traumatic experiences.

27. Notwithstanding, as the Judge indicates, over the following paragraphs - running from paragraphs 19 to paragraph 31 - the Judge sets out his analysis of the Appellant's account. Not all of those paragraphs are directly relevant to the issues that relate to domestic violence: it is only those few paragraphs do potentially relate to domestic violence that are the focus of the challenge.
28. In my judgment the fundamental difficulty that the Appellant's submissions encounter is that it is not possible to identify any passage in the First-tier Tribunal Judge's decision that suggests that he took into account as a material consideration that the sort of violence and threats the Appellant had narrated were in themselves implausible. Indeed, in my judgment to the contrary, aspects of the First-tier Tribunal Judge's reasoning take as a premise the claimed fact of violence.
29. For example, at paragraph 22 the Judge refers to the Appellant's claim of her father being *"a very strict man who told her she had no say in the matter of her betrothal and used to beat her almost daily because of her reluctance to enter into the marriage."* The Judge takes that assertion as a premise into the reasoning that follows:

"In circumstances in which her father had acted in this manner and she had been promised to [B] by him with the arrangement having already been made I find it lacks credibility that [B] would have needed to regularly visit the Appellant at her school",

and so on.

30. In my judgment that is a clear instance of the Judge taking as a premise the possibility that the Appellant is giving a truthful account of violence, but finding that that then does not sit well with the other aspects of the narrative. It is not an assessment that can be impugned because the Judge did not have reference to background or country information saying that indeed this sort of violence was endemic. The Judge does not *per se* challenge the plausibility of the claimed violence in his reasoning; rather, allowing for such plausibility, he considered the account undermined for internal inconsistency because the subsequent events described do not 'sit' with the violence of the claimed earlier events. Of course ultimately the Judge finds the Appellant's evidence so unworthy of acceptance he also rejects the claims of violence and coercion – but in so doing he does not at any point rely upon any reasoning premised in the unlikelihood of a milieu of violence directed towards women.

31. Paragraph 22 is also significant in my judgment because the Judge refers to the Appellant's claim that B was involved in a blood feud. The Judge records this:

"She had indicated at interview that [B] and his family did things around the house as they were involved in a blood feud with another family. Given such circumstances it also lacks credibility that [B] would have been willing and able to make return journeys of some six hours two or three times a week, if not daily (depending upon which version of events given by the Appellant is adopted) in circumstances in which he and his family were involved in a blood feud in their local area with the usual connotations of confinement to the family residence or at least being prudent and careful if leaving the family home at all. When asked to explain this at the hearing the Appellant claimed that [B] and his family did not care about the blood feud as they are a dangerous family themselves, which I find again begs the question as to why [B] would have been so considerably patient enough to make repeated visits to the Appellant over an extensive period of time in an attempt to persuade her to comply with the proposed marriage arrangements rather than simply enforcing the arrangements upon the Appellant. Again I find that this all demonstrates the Appellant's propensity to fabricate her claim as she has gone along and that it is riddled with inconsistency and a lack of credibility because it is not based on the truth."

32. It seems to me very clear that the Judge is setting the Appellant's narrative account in the milieu of a country situation where the Judge has an understanding of Kanun law, at least so far as it relates to blood feuds; and again it seems to me very clear that the Judge is premising his reasoning when analysing the Appellant's narrative account on an acceptance that the sort of violence described by the Appellant might well take place. There is nothing in this reasoning where the Judge in effect says, 'I do not accept that the Appellant's account can possibly be plausible because this sort of violence itself is not plausible'.

33. Further illustrations of this approach can be seen at paragraphs 23, 24 and 25.

34. At paragraph 23 the Judge says:

“Given that the Appellant has provided an account of having already experienced an abusive father, being forced into a marriage arrangement with Bashkim, who had threatened to kidnap her and was from a dangerous family, I find it surprising that the Appellant would have placed so much trust in a male stranger.”

The Judge’s reasoning is, again, premised on an acceptance of the plausibility of an account with regard to violence, but a finding that this does not sit well with other aspects of the Appellant’s account.

35. At paragraph 24 reference is again made to the Appellant’s father being a person who had been claimed to be *“strict and abusive towards her”*, but the Judge finds that that element of the Appellant’s account is not to be reconciled with other aspects of her account in respect of her relationship with the person whom she subsequently claimed had trafficked her to the UK.

36. Similarly paragraph 25 includes the following:

“I find such assertions do not sit comfortably with the Appellant’s claim that she was subjected to a very strict family regime including almost daily beatings and was the subject of a proposed forced marriage arrangement made by her father. In such circumstances it lacks any credibility that her parents, and I note that she has claimed that her mother would not disobey her father, would have acquiesced in obtaining a passport and then allow her to retain the passport herself with the obvious risk that it could be used by the Appellant as an identity document for any purpose including travel.”

Yet again the Judge considers the internal consistency and internal plausibility of the Appellant’s account on the premise of what she has said about the violence endemic within her own particular family. There is nothing to suggest that the Judge thought such violence in northern Albania was itself unlikely, or that he factored such a consideration into his evaluation of the Appellant’s account.

37. I should also add in respect of the suggestion that the Judge may have failed to focus on the particular geographical region from which the Appellant originates, that he makes reference to Kukës and Tropoje at paragraph 21, and again to Kukës at paragraph 23.

38. In all those circumstances, in my judgment, the reasoning of First-tier Tribunal Judge Pedro in respect of credibility is immune from criticism on any supposed disregard for domestic violence or the phenomenon of the prevalence of domestic violence in Albania and in particular the north of Albania.

Notice of Decision

39. The decision of the First-tier Tribunal contained no error of law. The decision of First-tier Tribunal Judge Pedro stands.

Direction Regarding Anonymity - Rule 14 of 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 or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed:

Date: **7 June 2017**

Deputy Upper Tribunal Judge I A Lewis