



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

Appeal Number: PA/03062/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 20 July 2017**

**Decision & Reasons
Promulgated
On 25 July 2017**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

**J S
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Shaw of Counsel, instructed by Kilby Jones Solicitors
For the Respondent: Mr P Armstrong, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant challenges the determination of First-tier Tribunal Judge Walker dismissing her appeal against the respondent's refusal on 13 March 2017 to grant her protection in the UK as a claimed victim of trafficking. The appeal was dismissed by way of a determination promulgated on 2 May 2017 following a hearing at Hatton Cross on 25 April 2017.

2. The appellant is an Albanian national born on 22 June 1996 who arrived here illegally on 7 July 2016 after claiming to have last left Albania on 5 July 2016 hidden in a lorry. She claimed asylum on 20 July.
3. Four points were made in the grounds for permission to appeal. These were: (1) that the judge made adverse findings relying on a document which was made available to him by the respondent following the hearing and on which the appellant had no opportunity to make submissions; (2) that the other credibility findings were tainted by an over reliance on speculation without sufficient engagement with the country material or country guidance cases; (3) that the judge incorrectly dealt with the evidence regarding the appellant's mental health and (4) that his approach to the availability of a sufficiency of protection was flawed. Permission to appeal was granted on 15 June 2017 by First-tier Tribunal Judge Chohan who only referred to the first ground in his decision.
4. At the hearing before me on 20 July 2017, Mr Shaw helpfully expanded on the grounds in his submissions and Mr Armstrong responded. At the conclusion of the hearing, I indicated that I would be setting aside the determination and remitting the matter back to the First-tier Tribunal for a full hearing afresh. I now give my reasons for so doing.
5. **Conclusions**
6. The document that is at the heart of the appellant's complaint is a letter from the British Embassy in Tirana dated 3 February 2017. It translates and summarizes information received from the Albanian Ministry of the Interior. Essentially it maintains that the appellant had not returned to Albania since she flew to Rome on an Alitalia flight on 3 March 2016. The date of birth accords with that given by the appellant herself and the photograph is clearly of the appellant as she appeared before me. The information about her departure conflicts with the appellant's claim of her movements and is referred to both in the NRM letter and in the refusal letter from the respondent. To that extent, the judge was correct to say that this information was already known to the appellant as it was contained in the evidence before her. The respondent's Rule 24 response also correctly makes that point.
7. The problem, however, lies with the other information contained in the letter which had not been disclosed in any other evidence, which had not been before the parties at the hearing and which the judge relied on to make adverse credibility. That was the absence of anyone

on Albanian records by the name provided by the appellant for her trafficker. The judge relied on that information to conclude that the trafficker did not exist. Whilst it may well be that he was right in his conclusion and that the claim is a fabrication, he erred in failing to disclose that information to the parties and in failing to give them the opportunity to respond to it. The prejudice to the appellant was material in that this finding was used to undermine her claim. That is procedurally unfair and for that reason alone, the determination cannot stand.

8. Other matters were also raised by Mr Shaw; specifically, to the judge's alleged failure to engage with country guidance when making several of his credibility findings. That, along with the possibility that his findings were tainted by the information in the Embassy letter, means that they are unsustainable and I, therefore, set aside the determination in its entirety except as a record of proceedings.

9. Decision

10. The First-tier Tribunal made errors of law such that the decision is set aside. It shall be re-heard afresh by a different judge of that Tribunal at Taylor House at a date to be arranged.

11. Anonymity

12. Although I was not asked to do so, I continue the anonymity order made by the First-tier Tribunal.

Signed

A handwritten signature in black ink, appearing to read 'R. Keir' with a small dot at the end.

Upper Tribunal Judge

Date: 20 July 2017