



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00032/2018

THE IMMIGRATION ACTS

Heard at Field House
On 16 May 2018

Decision & Reasons Promulgated
On 11 June 2018

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

MISS E D
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Gherman, instructed by Virgo Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of the First-tier Tribunal which dismissed Miss E D's appeal against the decision of the Secretary of State of 15 December 2017 refusing asylum.
2. Her claim was that she was married, had her own business but was bored and met a man who persuaded her to come to the United Kingdom with him, essentially to run away with him and then when she came to the United Kingdom with him and was taken to his house, on her account she realised she was being forced into prostitution. By this stage she was pregnant and she accepts that she was pregnant by him. She was able to escape some four months after arriving in the United Kingdom with the help

of an Albanian client and she claimed asylum subsequently. Her family in Albania, she said, did not know that she left Albania for the United Kingdom and she claimed risk on return on the basis of risk from the former trafficker as she would describe him and in respect of her child born in the United Kingdom on 31 August 2016 who is described as a street child in the sense I think that she is illegitimate, and also fears harm from her husband and family and the shame brought on the family.

3. The judge noted the appellant's background, did not think that the relatively short delay in claiming asylum was determinative, noted reasons given by the Hestia Organisation which concluded that she was trafficked which was not the conclusion that had been reached by the national authority on the point and also noted the report of the expert, Ms Young. The judge made something of the fact that Ms Young did not meet the appellant and I will come back to that a little later. Ms Young concluded that the appellant was at great risk, even if the trafficking experiences were untrue, essentially because of the presence of an illegitimate child, the fact that she and her family were from Kukes in northern Albania, the most traditional area of the country, and concluding she would be at risk of re-trafficking revenge from her husband's family and would have no support from her own family. The judge noted the origins of the family but also that the appellant and her close family had been living in Tirana since she was 1 year old.
4. The judge did not consider the appellant's personal circumstances were internally or externally consistent with those of a trafficked person. She was 24 by the time she met B, the trafficker, was close to her family, had been married for four years, was educated, had her own small business, was mature enough to reject his alleged advice to discard her passport and gave different reasons for doing so first because he was violent to her and otherwise because she did not want anyone else to use it. The judge did not think it was credible that although she had known him for only a month she would decide to leave her husband and family and there was not adequate evidence that she was in fact married as claimed. It was unclear why she and B had spent three weeks in Holland and there was little evidence of her circumstances in the five months she allegedly lived in the United Kingdom. She was slapped once during that period, refused to use contraception, must have known she was pregnant and the judge did not find credible the claim as to how she was able to escape.
5. The judge went on to say that even if it was accepted that she was lured into coming to the United Kingdom with the prospect of work, the evidence suggested that she was allowed to escape once it was clear she was pregnant. The judge thought there were strong grounds to believe that her family and B's family knew each other and that she was an economic migrant. The judge said that a noticeable omission from the account was any sense of duress or of being forced to participate in actions against her will. There had been no contact by B or harming of her although she said he knew she knows that he is in London. It was not credible that he would want to harm her as he was the father of her child. It was not suspected she was in the United Kingdom. There was no reason for the family to think she had worked as a prostitute and not as a hairdresser. Evidence was considered as to her depression and it was thought there was little evidence of present depression.

6. The judge went on to accept that although there might be difficulties in having an illegitimate child that factor on its own did not present a real risk of harm although Ms Young's report seemed to take that view the judge said that each case is fact specific. She had not been trafficked nor did the judge find a risk of re-trafficking. The background evidence and her own evidence showed she was close to her family. It had not been shown they would not be supportive of her. The judge went on to say, even accepting the child was illegitimate that that would not amount to a very significant obstacle for the purposes of paragraph 276ADE(6) of the Immigration Rules. So the claim was not accepted, the appellant was found to lack credibility and it was held that she would not be at risk on return on account of having an illegitimate child.
7. Ms Gherman essentially puts forward three grounds on the papers and developed today and these are challenged by Ms Isherwood on the basis that the judge's findings are sound and that the grounds amount to disagreement only. The first ground takes issue with the judge's findings, the conclusion that I have mentioned just now of there being a noticeable omission from the account of any sense of duress or being forced to participate in actions against her will and the grounds set out another example of this from the screening interview and the asylum interview, "I was forced into prostitution", that was said two or three times, "I was crying begging him to let me out", "he pulled my hair and started being violent", forced me to spend time with a client, "gang members forced me to work as a prostitute". In my view there is a difficulty here with the judge concluding there was no sense of duress or being forced to participate in actions against her will which goes contrary to a number of assertions made by the appellant and, as Ms Gherman points out it was said in MK, it is necessary to give reasons if there is going to be disagreement with evidence and a judge has got to say why that evidence is not accepted.
8. The grounds go on to refer to the fact that it was concluded that it was clear that the appellant was allowed to escape and there was no reason for the families to think that she had worked as a prostitute. It is argued in this regard that the country guidance in ID, although mentioned in the judge's decision, was not in fact applied and the grounds again refer to evidence by the appellant that the family would not in fact be supportive of her. She referred to rebukes she would face at the hands of her family and husband. She feared that her husband and family would kill her, the shame she had brought on both families and that they would not accept her, referred to fears that they would take her child away or kill her, then again a lack of explanation by the judge as to why this evidence was not accepted.
9. As I say I think there are difficulties with the judge's decision in this regard. Ms Isherwood argues that paragraph 24 has to be read as a whole and though there is the point about noticeable omissions from the account of a sense of duress and the lack of claims of harm to her or her family in Albania, Albania is a small place. It was not suspected she was in the United Kingdom, no reason for the family to think she had worked as a prostitute and not as a hairdresser but that does not specifically take

account of what she said would happen to her and how her family would perceive her situation.

10. The second ground concerns a challenge to the judge's failure as it is said to be to take proper account of Ms Young's evidence. The circumstances are clearly not classic trafficking circumstances in the sense of somebody being persuaded to leave the country being duped as to circumstances in a position of particular vulnerability. This was a situation on the appellant's account of her wanting to leave Albania with this man and only realising when she came to the United Kingdom that she was in fact being exploited. That as I say is her account. The judge disbelieved it and Ms Young, as the judge noted, did not meet the appellant. That I think has to be seen in light of the fact that on the whole she was giving general evidence about the circumstances for an illegitimate child. It is more difficult perhaps with regard to the trafficking issue and whether she was entitled to come to a view that the appellant had not been trafficked when she did not meet her but, as I say, in relation to the more generic evidence the judge again appears to have paid little heed to the expert's conclusions in this regard. No doubt each case is fact specific but Ms Young's account was not premised entirely on the basis of the appellant having been trafficked. She said that even if she had not been trafficked she would be at risk because of the presence of the child and the risk that the family at least originated from a very traditional part of Albania. The grounds go on to make points about the mandatory registration system involving the appellant's details being passed to her home authorities limiting her ability to return and be anonymous and there was no specific consideration, Ms Gherman argued, as to the consequences on return of her having borne an illegitimate child. Again I think there is force in the challenge made in that regard.
11. The third ground concerns the inconsistency as it is said to be with the judge's findings and the country guidance in TD. The judge made the point at paragraph 21 that her personal circumstances were not internally or externally consistent with those of a trafficked person and there is the mention as I say of her age, her education and her employment but it is said at paragraph (a) of the summary of the guidance in TD, it is not possible to set out a typical profile of trafficked women from Albania, trafficked women come from all areas of the country and from varied social backgrounds. It is true there is the point made at paragraph (h) about factors to be taken into account which include the social status and economic standing of the family and the level of education of the victim of trafficking or her family but this is in the context of sufficiency of protection more specifically than in relation to risk and has to be seen in the context of the earlier matters set out above including the absence of there being a typical profile of a trafficked woman and the point is made in the grounds that the judge has not properly considered the variety of social backgrounds from which trafficked women may come, that individuals with children outside marriage are particularly vulnerable and the strictness of the codes of honour that can pertain in Albania, the violence experienced by the appellant on her account after arriving in the United Kingdom and her evidence of a lack of family support.
12. It seems to me that bringing all these matters together that although perhaps none is entirely a knockout matter on its own, cumulatively the three matters raised in the

grounds are matters which show material errors of law in the judge's conclusions on the relevant issues in this case and as a consequence I consider that the decision is going to have to be fully remade in the First-tier Tribunal so there will have to be a full rehearing of this case at Taylor House.

Notice of Decision

The appeal is allowed.

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.



Signed

Date 08 June 2018

Upper Tribunal Judge Allen