



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

Appeal Number: PA/00655/2015

THE IMMIGRATION ACTS

Heard at Birmingham

On 20 September 2017

**Decision & Reasons
Promulgated
On 20 April 2018**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**LM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Martin, instructed by J M Wilson, Solicitors

For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, LM, is a female citizen of Albania who was born in 1968. Following a hearing in Birmingham on 6 February 2017, the decision of the First-tier Tribunal was set aside and directions were made for a resumed hearing in the Upper Tribunal. Following that resumed hearing, I invited both parties to send to me written submissions. Unfortunately, there was a delay in receiving the Secretary of State's submissions and opinions upon the need to cross examine the appellant, hence the delay in the promulgation of this decision.

2. My reasons for finding an error of law were as follows:

"1. I shall refer to the appellant as the respondent and to the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant, LM, is a citizen of Albania who was born in 1968. She was refused asylum by a decision of the respondent dated 31 July 2015. She appealed to the First-tier Tribunal (Judge Asjad) which, in a decision promulgated on 18 August 2016 allowed the appeal on humanitarian protection grounds and dismissed it on asylum grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The appellant comes from the Gora region of Albania. She claims to have suffered sexual and domestic abuse in Albania and, in consequence, to be suffering from post-traumatic stress disorder (PTSD). She says that she is both anxious and depressed. Judge Asjad found that the appellant was a credible witness. She also accepted the medical evidence regarding the appellant's mental health. She found that the appellant had been a victim of domestic violence [33]. She found also the appellant had been the victim of very severe sexual violence which had led her to become highly distressed and to self-harm [34].

3. At the appeal hearing in the Upper Tribunal at Birmingham on 6th February 2017, Miss Aboni for the respondent, told me that the Secretary of State did not challenge the findings of fact made by the judge. The difficulty in the decision lay in the failure of the judge, having made findings of fact, to use that factorial matrix as the basis for assessing risk on return for the availability of internal flight within Albania for this appellant. At [35], the judge wrote this:

"I do find that the medical evidence and the opinion of the medical professionals is particularly persuasive in this case. The appellant has had a number of sessions of counselling and had there been any other reason for her mental state, I do find that it would have been picked up. As it stands more than one medical professional gives the opinion that she is suffering from post-traumatic stress disorder as a result of the abuse in Albania. I do not accept that she could have consistently given the same account to all these professionals who are experts in their field and have interviewed and dealt with many patients. When all of this is considered against the country guidance about Albania - the prevalence of domestic abuse and trafficking of women, the balance has tipped in the appellant's favour. The appellant does not come across as an educated intelligent women and I find she has been consistent because there is an element of truth to what she states. She may well have lied about certain matters and we may never know the whole truth. But for all the reasons I have given and applying the lower standard of proof I do find there are substantial grounds that she would suffer serious harm and therefore her claim for humanitarian protection is granted."

4. It is a pity that, having considered the evidence in such detail, the judge should have concluded her decision without making any proper examination of the risk to appellant on return to Albania. I

acknowledge that that credibility of the appellant's account was put in doubt by the Secretary of State but this was not a case where the respondent had indicated that, if the appellant were to be found credible by the Tribunal, then the appeal should be allowed in any event. Although rather briefly, the refusal letter at [36-37] had given "further consideration...to your claim at its highest." The Secretary of State considered that "[the appellant] could obtain a sufficiency of protection and or in turn internally relocate within Albania to avoid your fear of [S]." In subsequent paragraphs [38] - [54], the Secretary of State gives reasons for her assertion that the appellant, if credible, can still safely return to Albania. Those reasons have not been addressed at all by the judge. In the circumstances, I set aside the decision. I consider that this appeal is now better remaining in the Upper Tribunal which will remake the decision following a resumed hearing. I accept that both parties may wish to submit evidence prior to that resumed hearing. Although I acknowledge it may be distressing for her, it will be important for the appellant herself to attend to submit to cross-examination. The resumed hearing will proceed on the basis that the appellant's account of past events in Albania is true and accurate as found by the judge in the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal promulgated on 18 August 2016 is set aside. The findings of fact are preserved. The Upper Tribunal will remake the decision following a resumed hearing on a date to be fixed in Birmingham before Upper Tribunal Judge Clive Lane.

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 him or any member of their 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.

3. At the resumed hearing, there was no oral evidence. I have considered the submissions sent to me by the representatives for both parties.
4. The starting point for my decision are the findings of fact made by the First-tier Tribunal which I directed should be preserved. In the First-tier Tribunal decision at [35], the judge wrote:

"I do find the appellant was a victim of both physical and sexual abuse at the hands of her partner ... She was consistent about three incidents that she said led to her scarring: she was consistent about how she was attacked with a blade to her wrist; she was consistent about having her kneecap dislodged; she was consistent about her teeth being broken by S [the partner]. She was consistent about the fact that she was repeatedly subjected to violence by S. She was consistent about the fact that she was forced to have sex with other men and she was also consistent about the fact that [S] would go where he wanted and she didn't know where he was."

5. I accept also that the First-tier Judge found that the appellant suffers from PTSD (post-traumatic stress disorder) as is evidenced by the medical professionals who have reported upon her treatment. I accept that the appellant is (as described by Mr Martin in his submissions) a “traumatised single woman being sent back to Albania”.
6. I have considered the background evidence relating to Albania which has been provided by both parties. Domestic violence and indeed discrimination against women in Albania remains a very serious problem. The US State Department (USSD) report records that the police in Albania do not have “training or capacity to deal effectively with domestic violence cases”. It is also clear from the report of UNICEF [7.1.6–7.1.7] that accommodation for a woman in the position of the appellant would follow on only after the grant of a protection order, in the appellant’s case against her former partner, S. The grant of a protection order appears to be fairly rapid but it is clear from the UNICEF report that the administrative structures responsible for following up upon that order and providing accommodation to the appellant are by no means as rapid. Mr Martin submits that, in the appellant’s precarious mental condition (as a result of her PTSD) she may never be able to apply for protection in the first instance. He submits that, even if the appellant does apply for protection, there remains the problem with persuading the police to assist her and, if she were to obtain a protection order, it would be hindered by her current depression and passivity (as a result of her PTSD) chasing those administrative bodies which should but may not provide her with shelter.
7. The difficulties outlined by Mr Martin would affect the appellant throughout Albania. I am not satisfied, as Mr Martin submits, that S would locate the appellant if she were to return to a different area of Albania (for example, Tirana) as there was no suggestion that his influence is so extensive as to enable him to locate the appellant within Albania wherever she may be living. I am, however, very concerned that the appellant’s mental condition as it currently presents would be a significant factor impeding her ability to initiate or follow up the procedures which she would require in order to obtain protection from the authorities and adequate shelter. Weighing the evidence as a whole, I am satisfied that the appellant, given her particular characteristics, would be at real risk of suffering significant harm if not from S directly then on account of her inability to access basic assistance and facilities including adequate accommodation. If she did not gain access to such facilities, there is a very strong likelihood that she would be exposed to sexual and physical violence at the hands of those seeking to exploit her, as occurred in the past. She cannot return to her home area of Albania for fear of encountering S and, in the light of my findings, I find it would be unduly harsh for her to relocate within the country. I find her appeal should be allowed on Article 3 ECHR grounds.

Notice of Decision

8. The appellant’s appeal against the decision of the Secretary of State dated 31 July 2015 is allowed on human rights grounds (Article 3 ECHR).

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Signed

Date 10 April 2018

Upper Tribunal Judge Lane

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 10 April 2018

Upper Tribunal Judge Lane