



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01593/2018

THE IMMIGRATION ACTS

Heard at Manchester
On 5th October 2018

Decision & Reasons Promulgated
On 5th November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

E M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Schwenk of Counsel, instructed by Kilby Jones Solicitors LLP

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

DECISION AND REASONS

1. The Appellant appeals against the decision of Judge of the First-tier Tribunal Tobin dated 28 March 2018. The Appellant is a national of Albania.
2. The Appellant arrived in the UK clandestinely on 1 October 2014 and claimed asylum the same day. She gave an account that she was originally from [B] in the Mat District. There, she entered into a relationship with a man called [A] which was kept a secret from both their families. [A] spent much of his time outside Albania, working in Greece. The relationship became known when she became pregnant. Both

families disapproved of the relationship but her family forced her to go to live with [A]'s family. They initially rejected her and only took her in when [A] appeared and accepted that she was pregnant with his child. Although the couple married, the relationship broke down shortly after, as [A]'s family did not want her to remain living with them.

3. The Appellant stated that she gave birth to her son in June 2010 and moved to Tirana in around October 2010. Her account thereafter was that she worked in a café and rented an apartment in Tirana. She stated that she met a man [E] who after a period of time entered into a relationship with her. They commenced cohabiting in or around January 2012 and after three months he forced her into prostitution. She remained in captivity in Albania for a prolonged period of time before her son, who suffers from autism, fell ill and had to be taken to hospital. The Appellant escaped from those whom had held her captive from that hospital. She obtained the assistance of a friend and approximately two weeks later left Albania with her son travelling clandestinely to the United Kingdom where she claimed asylum.
4. The Respondent rejected her claim for asylum and found also that she was not a victim of trafficking. The Respondent did however observe as follows in relation to the summary account I have given above. At [39], the Respondent states that:
 - “39. ... During your asylum interview you provided a detailed account of the problems you encountered with your husband, his family and your family during your relationship.
 40. Due to a lack of supporting evidence it has not been possible to substantiate this aspect of your claim consideration will therefore be given as to whether to give you the benefit of the doubt.”
5. In the body of the refusal letter dealing with issues of forced prostitution the Respondent stated as follows at [43]:

“It is considered that you were able to provide a reasonable level of detail regarding your time in the house.”
6. At [49]-[50] the Respondent considers the application of paragraph 339L of the Immigration Rules regarding the benefit of the doubt and finds at [51] that the problems with the Appellant's husband were accepted. However, at [52], the issues of forced prostitution were not.
7. The Appellant appealed and the matter came before the judge on 2 March 2018. The Appellant gave evidence and also before the judge was documentary evidence regarding the Appellant's son's health.
8. The judge held as follows, in summary:
 - (i) At [28], in relation to a country expert report:

“Dr Korovilas was not available to give evidence or answer questions in respect of his report. The weight that I attach to this report was further diminished by the absence of a letter of instructions nor details of his fee

arrangements so that I could not assess the full veracity of the Appellant's professional witnesses input. I was concerned that Dr Korovilas' report appeared to have strayed into evaluating evidence and otherwise giving his views on the credibility of the Appellant's evidence of fact. Dr Korovilas dealt with matters that should be properly be determined by the judge in this case. With these reservations in mind, I accept Mr Ogbewe's submission that this called into question the objectivity of his report and I was not particularly assisted by this evidence."

(ii) At [29] the judge held as follows:

"The Appellant's account of being trafficked was not at all credible or convincing. Although I exercise caution in assessing the Appellant's demeanour and the manner in which she answered questions, I found the weight she presented as lacking any credibility. Notwithstanding making significant allowances for the fact that she might be telling the truth in respect of her horrific chain of events the Appellant nevertheless appeared evasive and her answers were unconvincing. The Appellant spoke over the translator a number of times and did not answer the questions. She continuously interrupted the translator which meant that questions needed to be put to the Appellant a number of times to solicit the answer to the questions. We spent some considerable time trying to ascertain when the Appellant first met [E] and where she was working at that time. I was not able to get a consistent answer to that point in the chronology although the Appellant settled on the response said that she was working in [K F] as a waitress when she met [E]."

(iii) The judge also took issue at [30] that the Appellant was not able to give a specific address for the café.

(iv) The judge held at [31] that it was implausible that [E] would have taken a considerable period of time (six months) fostering a relationship with her and then a further three months cohabiting with her before entering her into forced prostitution.

(v) It was not plausible that the Appellant would have been left unaccompanied with money at the hospital allowing her to escape [32]-[33].

(vi) It was implausible that the Appellant would have left a significant amount of money from her own savings with a neighbour which she was able to utilise to facilitate her exit from Albania [35].

(vii) Certain details of her arrival in the UK and her approaching the Home Office at Croydon were implausible [36].

(viii) At [37] the judge referred to a perceived discrepancy in the Appellant's evidence:

"37. In evidence the Appellant said that her life would be in danger if she returned to Albania. She said [E] and his thugs would find her. She said that they were connected with the state which appeared to be a change of her evidence as in her previous account as she said that [E] and his associates would be able to trace her through their association with some police officers who used/abused prostitutes."

- (ix) Accepting the part of the Appellant's story in which she had said she had problems with her husband and his family the judge did not accept the Appellant's evidence of a lack of contact with her own family; the judge did not believe the Appellant's account that she had nothing to do with her family following her marriage; it was unlikely that they would turn their back on their daughter with a small child particularly one with special needs [38].
 - (x) At [41] the judge found that he was profoundly dissatisfied with the Appellant's account. She did not appear at all credible when answering questions. The appeal was dismissed.
9. The Appellant appeals on grounds dated 10 April 2018 which argue in summary that the judge materially erred in law in (ignoring a point made about whether the decision should have been anonymised):
- (1) failing to have any or adequate regard to the expert evidence before him, in particular on the issue of the plausibility of the Appellant's account of being groomed in Albania;
 - (2) in placing undue weight on the perceived demeanour of the Appellant;
 - (3) having regard to a purported discrepancy when no material discrepancy was apparent from the face of the Appellant's evidence;
 - (4) going behind the concession made by the Respondent in the decision letter that the Appellant had had the problems with her own family which she had set out in SEF interview;
 - (5) failing to have adequate regard to the medical evidence which related to her son's autism.
10. Permission to appeal was granted by Judge of the First-tier Tribunal Haria in a decision dated 23 April 2018. The relevant parts of that decision are as follows:
- "5. The weight to be given to any evidence is a matter for the judge. The judge gives adequate reasons at paragraph 25 of the determination for the weight given to the report of Dr Korovilas.
 - 6. It is arguable that the judge made an error of law material to the decision in:
 - (a) The over reliance on the demeanour of the Appellant when assessing her credibility,
 - (b) in going behind a concession made by the Respondent and
 - (c) in the findings as to the Appellant's son's autism in the light of the evidence particularly the letter from Alder Hey Children's Hospital dated 4 November 2015, (the Appellant's bundle pages 152 -154) and the letter from his school dated 6 February 2018 (the Appellant's bundle page 200).

11. Before me an issue arose between the parties as to the scope of that grant of permission to appeal. For his part Mr Schwenk argued that permission had been granted generally as was apparent on the header of the grant of permission to appeal itself. I also pointed out to both parties that the letter issued by the First-tier Tribunal in granting permission to appeal stated merely that permission had been granted. There was no advice given on the letter issued by the First-tier Tribunal suggesting to the Appellant that permission had been granted only on partial grounds. If that had been the manner in which permission had been granted, I find that it would have been appropriate for the First-tier Tribunal to have stated on the face of that letter that the Appellant had the opportunity of renewing an application for permission to appeal to the Upper Tribunal on the grounds on which permission had not been granted.
12. For his part Mr Tan argued that permission had been granted only on the limited grounds as set out in the decision of Judge Haria, and although it would have been preferable for the letter issued by the First-tier Tribunal to have informed the Appellant that she had the opportunity of making a renewed application for permission to appeal, and it would have been preferable for Judge Haria to have stated specifically on the face of the grant of permission that it was being granted only on partial grounds these were procedural matters which did not alter the clear meaning of the terms in which Judge Haria granted permission to appeal.
13. I find in favour of the Appellant in this matter which is that I treat permission to appeal being granted on all grounds. This is a consequence of permission being granted generally on the header of that grant of permission and as I have observed above the Appellant not having been advised that the grant of permission was on partial grounds only and that she had an opportunity to make a renewed application. My interpretation of that grant of permission is, I find, entirely in accordance with the guidance given by the Upper Tribunal in the case of Ferrer (limited appeal grounds; Alvi) [2012] UKUT 00304.
14. I therefore deal with all of the substantive grounds. During the parties' submissions, I indicated that I did not need to hear from Mr Schwenk initially but rather turned to Mr Tan for his observations on the Appellant's grounds.
15. Mr Tan at my suggestion focused principally on the issues of (i) the weight that had been attached to the expert report by the judge and (ii) the issue of the judge's approach to demeanour of the Appellant. Mr Tan defended the judge's approach to the expert report suggesting that the expert had strayed into evaluating evidence in such a manner that called into question his objectivity in his report. In particular Mr Tan referred to passages at pages 10 to 12 of the expert report on "the implementation of TIMS system in Albania", where the expert considers the reliability of the border recording system operative in Albania which records entries and exits to that country. The expert had concluded as follows at page 12:

"My conclusion on this point is that since Albania/Kosovo border (sic) this is a busy border crossing, it is perfectly reasonable to assume that the border control staff did not notice that a person who is not (*the Appellant*) has crossed this

border using (*the Appellant's*) passport. Therefore, the fact that TIMS system recorded (*the Appellant*) entering Kosovo on 13 July 2014 cannot be taken as evidence which is in contradiction to (*the Appellant's*) statement concerning her movements."

16. Mr Tan suggested that this was a matter which essentially representing the expert going on a frolic of his own and speculating about certain matters which were outside of the Appellant's own asserted evidence.
17. However, I find that the issue of the Appellant being recorded or apparently recorded leaving Albania at the Morine land border into Kosovo is an issue directly raised in the decision letter at [47] and therefore was a matter on which the expert would have been entitled to comment.
18. I accept that it certainly would be preferable for a copy of the letter of instruction to the expert to have been included in the appeal bundle. However, otherwise, I find that the judge's finding at [28] that the expert had strayed into evaluating the evidence and otherwise giving his views on the credibility of the Appellant's evidence, was a finding which was not open to the judge on the evidence within the expert report.
19. I have read the entirety of the report and I cannot see any instance of the expert purporting to comment on whether the Appellant's account was "credible" or otherwise. I find that the expert was entitled to comment, for example at page 7, whether the Appellant's account of how she was trafficked into prostitution was consistent with the pattern of prostitution and trafficking involving criminal gangs, and setting out, as he did, as follows:

"Ms Meta's account of how she was essentially tricked into working as a prostitute is entirely consistent with my understanding of how human trafficking and sexual exploitation networks operate, it is also consistent with the objective evidence on Albanian human trafficking networks."

The expert gives a footnote at that point of his report to the concept that human trafficking includes the process of moving a person from their normal into a life of slavery or sexual exploitation.

20. The expert also commented in the next paragraph that:

"The prevalence of human trafficking in Albania has made young woman (sic) very suspicious, therefore human trafficking networks are increasingly turning to the more subtle technique of recruiting women by pretending to form a relationship with them or by offering them what appears to be legitimate paid employment...therefore, (*the Appellant's*) account of how she befriended by [E], under the guise of forming a relationship, before being 'tricked' and 'forced' into prostitution, is entirely consistent with the objective evidence on how Albanian human trafficking networks operate."

There is then a footnote to “Albanian entrepreneurial practices in human smuggling and trafficking: on the road to the United Kingdom via Brussels, 1995 – 2005, Johann Leman and Stef Janssens.

21. I find that the expert has merely done that which is expected of him; to provide an opinion as to whether a particular account is consistent or not consistent with the country information concerning a particular phenomenon in a country of origin. He does nothing more or less. I find that the judge was not entitled to treat the expert report as deserving of only little weight, and to find that the expert had demonstrated a lack of objectivity in his report.
22. This then leads into the specific argument set out at paragraph 8 of the grounds of appeal which is that the judge failed to have any or adequate regard to the passage within the expert’s report about the phenomenon of grooming and trafficking gangs enticing potential victims of trafficking into relationships. This is precisely the scenario which the Appellant had set out in her evidence and the expert evidence on that issue was clearly directly relevant to the credibility of the Appellant’s account. I find the judge erroneously left out of account the expert evidence on that matter. I find that this is a significant error of law.
23. The next matter complained of in the Appellant’s grounds of appeal is the judge’s over reliance on demeanour. I have set out above the passed in the judge’s decision in which he deals with that matter. However I have drawn to the parties’ attention today the reported case of KB and AH (credibility – structured approach: Pakistan) [2017] UKUT 491 in which the Honourable Lord Burns and Dr Storey held as follows at paragraph 33:

“Second, such indicators are not to be taken as an exhaustive list: for example the list given in the Home Office Instruction does not include demeanour. In our view that is consistent with established case law which considers that in asylum appeals it will be rarely stated to attach significant weight to demeanour as a factor (see e.g. B v SSHD (Democratic Republic of Congo) [2003] UKIAT 00014 paragraph 10: ‘Judging demeanour across cultural divides is fraught with danger’); indeed, we shall mention below what we made of the demeanour of the first Appellant. On the other hand, we do not think it possible to exclude that in certain circumstances demeanour may be relevant.”

24. The Tribunal in KB and AH then go on to state as follows at paragraph 50:

“We alluded earlier to the possible relevance of demeanour in assessment of credibility and stated argue that it would be rarely if ever be of importance in asylum appeals. Illustrative of perhaps of why, it was our own reaction to the first Appellant’s evidence that throughout he seemed uncomfortable and not always able to give answers to the specific questions being asked of him (a number of questions had to be repeated for that reason). However viewing the evidence as a whole, we bore in mind that we were receiving his evidence through an interpreter and that these features of his oral testimony were as likely to be personality traits not connected to matters going to credence. Hence we decided to attach little negative weight to such short comings.”

25. I find that all of the Appellant's evidence ought to have been taken into account in the round, in addition to the apparent manner in which she gave evidence before the judge. For example, it appears to me (without binding any future Tribunal), that the Appellant's account as set out in the SEF interview of 21 April 2015 was a long but coherent narrative which for the most part was set out in large extracts, for example question 43, question 63 and question 180, where the Appellant gave a clear account, uninterrupted by additional or supplementary questions from the interviewing officer. Although this therefore appears to be in contrast to the way in which she appears to have given evidence before the Judge, the fact that the Appellant was capable of giving a clear and coherent account in her SEF interview should have been taken into account by the Judge. It is likely that it was the manner in which she gave her evidence in the SEF interview which resulted in the Respondent describing those parts of her evidence as representing a detailed account (refusal, at [39] and [43])
26. I find in the light of the guidance given by the Upper Tribunal in the case of KB and AH that the judge materially erred in law in treating the demeanour of the Appellant when giving evidence before him as being a significant matter. It is clear that the judge placed significant weight on the perceived demeanour of the Appellant when giving her evidence.
27. I also find that the judge was not entitled at [37] to treat the Appellant's evidence as containing a material discrepancy, having suggested that [E] had connections with the state, whereas she had also made reference to police officers attending as clients at the house where the prostitutes provided their services. Police are clearly representatives of the state. There was no discrepancy.
28. It is notable that the judge did not make any findings as to whether effective protection or internal flight was available to the Appellant, and so the above mentioned flaws in the assessment of the Appellant's credibility were crucial to the outcome of the appeal.
29. As a result of the above matters, I find that the judge materially erred in law in his assessment of the credibility of the Appellant's account. I have not found it necessary to determine grounds (4) and (5) as set out in my paragraph [10] above. The severity of the Appellant's son's autism will be a matter to be considered by the First-tier, upon remittal of this appeal, which is necessary due to the extent of findings of fact which need to be made in relation to the appeal.

Notice of Decision

The making of the decision involved the making of material errors of law.

I set aside the judge's decision.

I remit the appeal to the First-tier Tribunal.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

The appeal concerns a protection claim and makes reference to sexual exploitation of the Appellant. 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.

Signed

Date 25.10.18

A handwritten signature in blue ink, appearing to read 'Ray O'Ryan', is written over a faint circular stamp.

Deputy Upper Tribunal Judge O’Ryan