



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/04063/2017**

Appeal Number:

PA/04065/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 2nd August 2018**

**Decision & Reasons Promulgated
On 27th August 2018**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**J G (FIRST APPELLANT)
I G (SECOND APPELLANT)
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not present or represented

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

DECISION AND REASONS

1. The first appellant, JG, is a female citizen of Albania born in 1986. The second appellant is JG's daughter who was born in 2016. I shall refer to the first appellant as "the appellant" throughout this decision. By a decision promulgated on 9 February 2018, I found that the First-tier Tribunal had erred in law such that his decision fell to be set aside. My reasons for reaching that finding were as follows:

1. The first appellant, JG, is a female citizen of Albania who was born in 1986. The second appellant (her daughter and who is dependent on her

mother's claim) was born in 2016. I shall refer to the first appellant as 'the appellant' throughout this decision. The appellant claims that she left Albania in August 2015 and travelled via Italy to France and then to the United Kingdom. She entered the United Kingdom clandestinely by lorry in November 2015. She did not claim asylum until October 2016. She claimed that she was in danger of abuse at the hands of her father in Albania. She had given birth to the second appellant whilst in the United Kingdom. She had claimed that she had been trafficked to the United Kingdom but withdrew that claim as the judge recorded [67]. Her application for asylum was rejected by the Secretary of State by a decision dated 4 April 2017. She appealed to the First-tier Tribunal (Judge Young) which, in a decision promulgated on 20 June 2017, dismissed the appeal. She now appeals, with permission, to the Upper Tribunal.

2. The judge rejected the appellant's claim that she was at risk from her father. That finding is not the subject of a cross-appeal by the appellant and I see no reason to interfere with it. At the Upper Tribunal hearing, Ms Reville concentrated her submissions upon the fact that the appellant would be returning to Albania as a single mother with a young child. That element of the claim and appeal was considered by Judge Young but he rejected it. At [81], he referred to the case of MK (Lesbians) Albania CG [2009] UKIAT 0036. Ms Reville submitted that that case is no longer good country guidance and that the judge erred in law by referring to it. Mr Nath submitted that there was no material error in the judge's reliance upon MK given that he had only concluded from his consideration of the case [81] that each case needed to be determined on its own facts, a conclusion which is hardly controversial. Whilst that is true as regards [81], I am concerned that the judge refers again to the case of MK at [83]. The judge wrote:

Insofar as humanitarian protection and the protection of Article 3 ECHR are concerned again it would be necessary to accept the appellant's claim that she is at risk of her father and that is not a claim that I can consider can be accepted for the reasons outlined. Neither could it be said according to MK that there would be a real risk that a woman without family support in Albania would suffer destitution amounting to inhuman or degrading treatment resulting in a breach of Article 3 of ECHR. That case does say that each case should be determined on its own facts but I do not find that the facts here would support the proposition that there is a real risk of inhuman or degrading treatment.

3. I find that paragraph to be problematic. First, the judge has relied upon the now withdrawn country guidance of MK. Secondly, the last sentence of the paragraph amounts to nothing more than the observation that every case should be determined on its own facts followed by the assertion that the facts in this case do not indicate that there would be a risk. What is missing in the analysis are proper reasons for reaching that conclusion. Thirdly, it is also unclear from the paragraph whether the judge is proceeding on the premise that, having rejected the claim of risk from the appellant's father, this appellant would with her young child have access to family support in Albania. That may be what the judge is saying in the first sentence of the paragraph but it is not clear.

4. The judge refers also to the case of TD and AD (Trafficked women) CG [2016] UKUT 0092 (IAC). He discounts any assistance which TD and AD

might provide on the basis that the case was “very specific to the victims of trafficking”. That statement is to a large extent true but, as Ms Reville pointed out, TD and AD does have rather more generalised observations to make in respect of single women in Albania. For example, at [51–52] of TD and AD we read:

A further problem lies in the isolation of the VOT once she leaves the shelter. The family remains of central importance in Albanian society and women such as VOTs or victims of domestic violence who live alone stand out. Being a single woman is always a factor that attracts unwanted attention. For instance harassment in the workplace is something which occurs, but is less likely to happen to women who have the protection of a family around them. Although there is no data or recent research on the situation for single women who return to Albania and live alone, in Professor Haxhymeri's experience they are "in most cases considered as abandoned from their families because they are 'kurva' (whores). This label carries a lot of hate, discrimination and risk of exclusion. They are not welcomed in social groups. Even when employed, people try to stay away from them. Employers try to exploit them by making them work long hours, harder and pay them less." Professor Haxhymeri observes that such individuals do not make a lot of money but sometimes "it is enough to survive".

Whilst these problems are faced by all single women the position for women from Northern Albania is exacerbated by the very traditional culture there. In her view young women in Northern Albania face a high risk of being trafficked because of their lack of proper education, social isolation, arranged marriages and limited living resources. Girls in Northern Albania experience higher levels of abuse within their family which sometimes influences their decision to run away with the first man they meet. This does not mean that those from the southern part of the country do not face a risk of trafficking; risks arise in isolated areas because of a lack of resources or the vulnerability of the family, for example the presence of no men or an unmarried mother.

5. Having rejected the appellant's claim that she would be ill-treated by her father in Albania, the judge has failed to make conclusive findings as to whether the appellant would have the support of her family in Albania. In the light of the position of single mothers in Albania, such findings were very important. I can understand the judge taking a dim view of an appellant who delayed claiming asylum, entered the country clandestinely, withdrew a claim that she had been trafficked and who had given untruthful evidence to the Tribunal regarding ill-treatment at the hands of her father. However, there still remained the question of the risk to the appellant as a single mother in Albania and that part of the judge's analysis remains incomplete. In the circumstances, I set aside the First-tier Tribunal's decision. I preserve the findings as regards the appellant's claim regarding her father. Some fact-finding will remain to be carried out but that may be undertaken by the Upper Tribunal. It will be necessary for the Upper Tribunal at the resumed hearing to make findings on the evidence regarding the appellant's relationship with her family in Albania. Following the making of those findings, the risk to the appellant upon return as a single mother will need to be determined. Any documentary evidence (including any further witness statement) upon which either party may intend to rely must be sent to the Tribunal and exchanged with the other party no later than ten days before the resumed hearing.

Notice of Decision

6. The decision of the First-tier Tribunal which was promulgated on 20 June 2017 is set aside. The findings of fact as indicated above are preserved. The Upper Tribunal will re-make the decision (Upper Tribunal Judge Lane) at a resumed hearing on a date to be fixed at Field House with a time estimate of 1.5 hours. The parties' attention is drawn to the directions for that resumed hearing set out at paragraph 5 above.

7. An anonymity direction is made.

2. At the resumed hearing at Field House on 2 August 2018, Mr Tarlow, a Senior Home Office Presenting Officer, appeared for the respondent. The appellant, who no longer has a professional representative, did not attend the Tribunal hearing. I am satisfied that she was served with a notice of the hearing by second class post on 4 July 2018 at her last known address. There has been no communication received from the appellant to explain or excuse her absence at the resumed hearing. In the circumstances, I proceeded with the hearing in the absence of the appellant.
3. The issue before the Upper Tribunal was set out in my error of law decision at [5]. The burden of proof rests on the appellant and the standard of proof is whether there is a reasonable likelihood that the appellant faces the real risk of persecution or ill-treatment upon return to her home area of Albania. There is no additional evidence from the appellant herself and, in particular, the Tribunal is not assisted by the failure of the appellant to provide any evidence regarding the question of the appellant's relationship with family members in Albania. As I noted in my error of law decision, this appellant had claimed asylum having entered the United Kingdom clandestinely and then withdrew a claim that she had been trafficked on the basis that the claim was untrue and then gave untruthful evidence to the Tribunal regarding her claimed ill-treatment at the hands of her father. Those are the established characteristics of the appellant as a witness in the light of which the Upper Tribunal needs to consider evidence.
4. A risk to the appellant upon return to Albania would only arise if she has no family members (in particular, male family members) who might be able to offer her support. I am aware that the appellant is *prima facie*, a single mother who is returning to Albania with a young child. The appellant claims that she has no family members in Albania who would be able to assist her but, equally, she claimed that she had been ill-treated at the hands of her father, a claim which proved to be untrue. Having considered all the evidence as I have before me (including the written evidence which was before the First-tier Tribunal) and having in mind the failure of the appellant in the past to give reliable evidence before a court and before the Upper Tribunal to submit her evidence for cross examination, I find that I am not satisfied that the appellant has discharged the burden of proving that she does not have family members in Albania who would assist her upon her return. It follows that I should find that there are living in Albania family members who can assist her and

that the risks highlighted in the case of *TD and AD* (see above) which may be faced by single women and unmarried mothers, will not threaten this appellant.

5. In the circumstances, I find that the appeal should be dismissed.

Notice of Decision

These appeals are dismissed.

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.

Signed

Date 4 AUGUST 2018

Upper Tribunal Judge Lane

TO THE RESPONDENT FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 4 AUGUST 2018

Upper Tribunal Judge Lane