



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07463/2016

THE IMMIGRATION ACTS

Heard at Field House
On 3 April 2019

Decision & Reasons Promulgated
On 20 December 2019

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

MS K
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Collins, Counsel, instructed by Sentinel Solicitors

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Albania who was born in 1991. She claims to have left Albania at the beginning of September 2014 and then travelled to the UK by lorry, where she entered, clandestinely, on 25 September 2014. She had come voluntarily with her fiancé, E, because of the poor economy in Albania and in the hope that they would have a more prosperous life in the UK.
2. At some stage the following month she was stopped by police in this country and released.

3. It appears that by the time of her release she had parted from her fiancé; she claimed that she did not tell the police that E was her fiancé because he had told her that if she mentioned her relationship with him she would be sent back home quicker. That, at any rate, is the explanation she gave in her asylum interview.
4. On release, she claimed that she approached a man, Z, because she had heard him speaking Albanian on his phone and travelled with him to his house. She claims that Z had raped her and forced her into prostitution by a combination of threats to what he and his associates would do to her sister if she did not do what they wanted and also that she would only be fed if she worked for them.
5. She claims that she was able to escape because although she had been locked in the house, one day they had left the door open and so she was able to flee.
6. She realised in November that she was pregnant and her son was subsequently born in the UK.
7. She did not report the rape to the police and only told her GP that she had been raped in October 2015.
8. The appellant claims that having escaped after being held against her will for two weeks by Z she had travelled to London and had contacted her family in Albania (in October 2014) but her father had said to her that he did not want anything more to do with her because of what had happened. At this stage (that is, October 2014) she had not known she was pregnant.
9. She claims that her father had issued threats against her and her child, and that if returned, she would be at risk of ill-treatment from her father, Z and his associates and also her fiancé, E. She claims to have been the subject of threats by all of them and that Z had also made threats against her sister.
10. Because of the appellant's claim to have been trafficked in this country (by being forced to engage in prostitution) consideration was given to whether or not she had been a victim of trafficking but in a National Referral Mechanism (NRM) decision of 25 February 2016 (which considered her situation on the balance of probabilities) it was concluded that she had not. Her claim for asylum was subsequently refused on 8 July 2016.
11. The appellant appealed against this decision and her appeal was heard before First-tier Tribunal Judge Reid at Taylor House on 24 April 2017, but in a Decision and Reasons promulgated on 3 May 2017 Judge Reid dismissed the appellant's appeal.
12. Permission to appeal was refused both by the First-tier Tribunal and also by the Upper Tribunal (UTJ Bruce) but the appellant was granted permission to apply for judicial review of Judge Bruce's decision refusing to grant permission to appeal, and as is usual in these cases, the respondent then agreed that Judge Bruce's decision should be set aside, following which the Vice President of this Tribunal, Mr Ockelton, granted permission to appeal, in light of the High Court decision. However, when giving his reasons, Mr Ockelton reminded the parties "that the

Upper Tribunal's task is that set out in s.12 of the 2007 Act". That is to say that this Tribunal has first to consider whether or not Judge Reid's decision contained any material error of law.

13. The appeal was accordingly listed before this Tribunal on 3 April 2019, where I heard oral argument on behalf of both parties.
14. At the conclusion of the hearing I reserved my decision, and within a matter of days, having given anxious scrutiny to the submissions which had been made and to all the documents within the file, I had reached my decision. I had not found this a difficult decision to make, for the reasons which are now set out below, but regrettably, the file was then mislaid, and, in the absence of any request from either party, the promulgation of this decision was overlooked and it was not finalised or promulgated when it should and but for the mislaying of the file would have been. The file having very recently come to light, I now promulgate this decision; the decision is the one which I had originally intended to give, but the Tribunal apologises to the parties for the delay.

The Appellant's Grounds

15. Both in her grounds of appeal and in the grounds in support of her application for judicial review of UTJ Bruce's refusal to grant permission, the appellant advanced two arguments. The first was that, contrary to the guidance given by the Court of Appeal in *Mibanga v SSHD* [2005] EWCA Civ 367, the judge had failed to factor into her assessment of the evidence the medical evidence which she had accepted, that the appellant had suffered trauma, suffered from PTSD and was accordingly "unable sometimes to be entirely consistent or very clear about things". The other ground was that when focusing on the appellant's delay in claiming asylum, the judge had failed to adopt the more nuanced approach which was required "when assessing a trafficking claim" following the reasoning of Dove J in *R v SSHD on the application of FK* [2016] EWCA 56 (Admin). Extracts from both these decisions (that is, *Mibanga* and *FK*) are contained both in the original grounds and in the grounds in support of the application for judicial review.

The Hearing

16. On behalf of the appellant, Mr Collins submitted at the outset that this was "a trafficking case" but accepted that UTJ Bruce, when refusing permission to appeal, had not been wrong to consider that this case did not contain the "most medical evidence we can see" (Judge Bruce had described the medical evidence as "limited" when stating in her reasons that "it is not arguable that the First-tier Tribunal failed to have regard to the medical evidence (limited as it was) of PTSD and related symptoms". However, Mr Collins submitted that even though the medical evidence was not as strong as it might be in other cases the appellant was still a vulnerable person. He submitted that the judge, having accepted that the appellant had suffered some form of trauma and that she had PTSD, and that she had received counselling, although this was "not necessarily a *Mibanga* case", and although the judge had referred to the medical evidence and the expert evidence in the case, nonetheless this had not been "at the forefront of her mind when she made her findings". In

particular, the finding at paragraph 25 (that it was implausible that the woman who had been keeping her secure in the house where she was forced to work as a prostitute had forgotten to lock her in one day) was “unfair”.

17. Mr Collins submitted that there had been five reasons for rejecting the appellant’s account. The first was the delay in making her claim. She had not made an asylum claim until eight months after she had claimed to have escaped from her imprisonment in the house where she had been forced to work as a prostitute. This was at the forefront of the judge’s mind, but it failed to take account of the guidance given by Dove J in *FK* that delay was not unusual in trafficking claims.
18. The second reason for disbelieving the appellant’s account was that the appellant had claimed that she did not know where she was taken to. His submission on behalf of the appellant was that this was just the sort of person who could be trafficked. Her case was that her fiancé had gone back to Albania, having abandoned her. She had arrived in the UK illegally in a lorry and was now on her own.
19. The third reason why the judge disbelieved her was the implausibility of her escape, but she had not been in a prison.
20. The fourth reason was that the appellant had not told her GP about the claimed rape until October 2015, and the fifth reason was that she had never reported the rape to the police.
21. Although at the outset Mr Collins had appeared to agree that this was not in terms a *Mibanga* point, he nonetheless submitted that the medical evidence had effectively been rejected because of the adverse credibility findings which the judge had made. It was clear that the judge had rejected wholesale the account the appellant had given of effectively being trafficked after her arrival in the UK.
22. On behalf of the respondent, Mr Clarke reminded the Tribunal that (as stated earlier within this decision) the grounds only contained two discrete arguments, that was the *Mibanga* point that the judge had not properly factored in the mental health issues when considering credibility in the round and secondly that the findings on delay were unsustainable in light of Dove J’s decision in *FK*.
23. This was a very well-reasoned decision and the judge had adequately factored in her findings with regard to the appellant’s mental health. The adverse credibility findings went far beyond the issues identified on behalf of the appellant. At paragraph 22 of her determination, the judge had made findings with regard to credibility that even though she did not “accept the entirety of the appellant’s account” she nonetheless accepted that she had been “through some trauma at some time for which she has required counselling” and accepted further that that might mean that the appellant was “unable sometimes to be entirely consistent or very clear about things”.
24. Then, at paragraph 23, the judge referred not just to the delay in the appellant making her asylum claim, but that this delay occurred at a time when she was pregnant and had a future child to think of. The judge accepted that finding out that

she was pregnant was a shock to the appellant and that her mental health issues might have been present from this time, but considered that the delay affected her credibility because she had not tried to get any advice or take any steps “to deal with the prospect that she would be likely to be returned to Albania, even though afterwards living with a supportive woman”.

25. So, at this time, the appellant had been supported by a person in this country and would have been mindful of the potential impact of forced removal, but nonetheless took no steps to secure asylum in this country during this period.
26. Then, at paragraph 24, the judge had considered specifically the circumstances in which the appellant claimed to have been “trafficked” (by being forced into prostitution). In particular, the judge had found it implausible that the appellant would simply follow a stranger without knowing where she was going and that she did not even have a broad idea of where she had been. The appellant was an educated intelligent person, so it was unusual that such a person would pay such little attention to her surroundings. Mr Clarke also emphasised that at this time it was not suggested that she had any mental health issues, and nor was she a vulnerable person.
27. With regard to what I have referred to as the *Mibanga* point, the judge had not artificially separated the diagnosis of trauma from her adverse credibility findings. The judge noted the appellant’s explanation of why she had not told her GP what she said had happened to her until a year afterwards, which was that she had seen a female GP, but, as the judge noted (at paragraph 26), she had already seen a female GP at the beginning of September 2015 when she had explained that she had had no contact with her family. The judge noted that this was not the first time therefore that she had seen a female doctor and the issue of her lack of contact with her family had come up previously.
28. The judge at paragraph 26 also referred to the daily headaches which the appellant had told the GP she had been getting for a year and considered that this also cast doubts on her account

“because it appears to be an attempt to link quite debilitating symptoms to start a year before, i.e. to around the time she says she was raped and held against her will, which symptoms she did nothing about, despite accessing ante-natal care since around November 2014 ... which would have involved regular checks on her and her baby”.

As the judge noted, the appellant could have raised these headaches (if they had occurred) “without explaining the circumstances in which they started”. The judge had in mind also that there had been “no requirement that she told her GP about the rape” and particularly given that she was already arranging counselling.

29. Mr Clarke also asked the Tribunal to note that at paragraph 27 the judge had also been concerned at the appellant never reporting the rape and detention to the police, even though, on her account, Z had made threats against her sister as well, so this would not just have been a case of reporting what had happened to her, but also

reporting a possible threat to her sister. The judge noted that this failure was at a time when she had had support from Rape Crisis (since August 2015) and from Hestia (since May 2015) together with ongoing support from Solace Women's Aid. Accepting that there was no requirement to report rape or sexual exploitation, the judge was entitled (in Mr Clarke's submission) to consider this, as she did at paragraph 27, "a relevant factor in the assessment of whether the claimed event happened".

30. With regard to the specific *Mibanga* point, there was no artificial distinction between consideration of the medical evidence and the adverse credibility findings. The judge considered how her trauma might have come about and was unable to make any positive findings, but all the evidence was considered in the round.
31. With regard to the guidance given by Dove J in *FK*, that decision was very specifically concerned with the case of a woman who had been trafficked into the country, and is very far removed from the circumstances of this case, where what is alleged is that having voluntarily arrived in this country, this appellant was falsely imprisoned for a period of two weeks and forced to work as a prostitute, but then escaped. As the judge made clear at paragraph 32 of *FK*, the issue in that case was whether the respondent had complied with his own guidance regarding how trafficking cases should be dealt with, and as to the mitigating circumstances which needed to be addressed before an adverse credibility finding could be reached.
32. In reply, when asked what the medical evidence had been which, it was said, the judge had ignored when making her credibility findings, Mr Collins accepted that there had not been an expert report "as such". There had not been any Istanbul Protocol compliant findings and those findings which there had been had been very generalised. However, the judge was aware of the medical issues and the appellant's symptoms were in line with people who had suffered from sexual violence and related trauma. So far as the *Mibanga* point was concerned, there had been no real analysis of the trauma from which the appellant had been suffering.

Discussion

33. In my judgment, this was an extremely thorough and detailed decision, in which the judge carefully took account of the arguments advanced on behalf of the appellant (in particular that she was suffering from some trauma and medical health problems) before considering that nonetheless she could not accept the appellant's account. The judge in particular had in mind that the previous NRM decision had been made on the balance of probabilities, and that she (the judge) was obliged to consider the issue of credibility to a lower standard of proof. Nonetheless, for the reasons which she gave, the judge was unable to accept, even to the lower standard of proof, that the appellant's account had been honest.
34. The judge's decision was one which was open to her and the grounds (and submissions) in effect do not amount to more than a disagreement with the factual findings which the judge made. Given that at the time the appellant claims to have gone with Z to his home, it is not suggested that she was then suffering from any mental health problems, and that when she left, she would have been in the public

street, the judge was entitled to find that it was remarkable that the appellant claimed to have had simply no recollection of where she was or where she had been. She could not even recollect to which if any station she had gone. The other factors which the judge took into account were also relevant.

35. So far as the *Mibanga* point is concerned, the judge clearly did take account of the appellant's trauma and her other mental health problems, and the delay in the appellant making her claim was only one of the many factors considered by the judge when reaching her decision in the round rejecting the appellant's account. The judge also specifically took into account (at paragraph 22) that because of "some trauma" for which the appellant had "required counselling", this "may mean that she is unable sometimes to be entirely consistent or very clear about things".
36. However, these factors were not so compelling that the judge was required to accept an account which for the reasons which are set out within the decision (having given due allowance to the difficulties to which these factors gave rise) the judge considered not to be credible. The adverse credibility findings were made in light of the judge's acceptance of the need to give allowance to the difficulties the appellant might have in being consistent, and were not made without regard to this factor.
37. So far as the decision of Dove J in *FK* is concerned, the facts in this case are very dissimilar. As already noted above, the delay in making the claim was only one of the factors considered as relevant by the judge (and this is a relevant factor) and the judge explained why, in her view, this remained a relevant (albeit not necessarily a determinative) factor (for example that the appellant would have had a need to consider the position of her unborn child and also the alleged threats to her sister).
38. In these circumstances, there is no arguable error of law in Judge Reid's decision and this appeal must accordingly be dismissed.

Decision

The appellant's appeal against the decision of First-tier Tribunal Judge Reid is dismissed, there being no arguable error of law in the judge's decision.

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:



Upper Tribunal Judge Craig

Date: 18 December 2019