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

Appeal Number: PA/03772/2019

**THE IMMIGRATION ACTS**

**Heard at Cardiff Civil Justice Centre**

**Decision & Reasons  
Promulgated**

**On 31 January 2020**

**On 26 February 2020**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE FROMM**

**Between**

**B S**

(ANONYMITY DIRECTION MADE)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr P Georget, Counsel

For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

**DECISION AND REASONS ON ERROR OF LAW**

1. The appellant appeals with the permission of the First-tier Tribunal against a decision of Judge of the First-tier Tribunal G Wilson, promulgated on 24 September 2019, dismissing her appeal against a decision of the respondent, made on 3 April 2019, refusing her

protection and human rights applications. The appellant had claimed on behalf of herself and her three dependent children.

2. The appellant's application was based on a claim that she was a victim of human trafficking but, on 25 October 2018, the National Referral Mechanism concluded that the appellant was not a victim of human trafficking. The respondent did not consider the appellant had provided a consistent account of her claim to be trafficked. The respondent also rejected the appellant's claim to fear her family in Albania. Reliance was placed on the appellant's failure to claim asylum in Italy where she had the opportunity to do so. In any event, background information showed the authorities in Albania would be able to provide the appellant with effective protection. The appellant would be able to relocate to Tirana and access support there as a single woman.
3. Judge Wilson heard the appeal in Newport on 9 September 2019. The evidence filed in advance of the hearing included medical evidence suggesting that the appellant might be a vulnerable witness. With the agreement of the representatives, the judge applied the Joint Presidential Guidance Note No 2 of 2010 and the relevant Practice Direction. The judge recorded that credibility was in issue and he reminded himself of the guidance contained in the cases of HKv SSHD [2006] EWCA Civ 1037 and Y v SSHD [2006] EWCA Civ 1223. He reminded himself that when assessing the cogency of the appellant's evidence and her credibility he should bear in mind her mental health and vulnerability.
4. The judge also noted the relevant background evidence, country guidance and expert report which had been provided to him. He found there was support for the appellant's claim within the objective evidence, country guidance and country expert report that there is a prevalence of people trafficking in Albania and that there is a patriarchal society within Albania based on honour. There was evidence that a woman who had been trafficked would not be accepted by her family or her husband's family and that divorced single mothers who live alone are not looked on favourably by society. In short, he accepted there was support for the appellant's account in these sources.
5. The judge then analysed the appellant's account under six headings before reaching his conclusion at [45] that the evidence which supported the appellant's account taken cumulatively did not outweigh the adverse credibility matters he had identified and therefore the low standard of proof had not been satisfied by the appellant. She had not demonstrated she had been abducted and forced into prostitution in Albania in the manner she described or at all.
6. The grounds seeking permission to appeal were drafted by Mr Georget, who also appeared in the First Tier Tribunal. Judge of the First Tier Tribunal Scott Baker granted permission to appeal, stating,

“4. Having rejected the medical evidence it is arguable that the findings on credibility are flawed, especially as there were no findings as to whether the judge had accepted that the appellant was suffering from PTSD and that the findings had been focused on limited events rather than a holistic evaluation.”

7. Mr Georget developed his grounds at the hearing. There are three grounds but they overlap and they all relate to the judge’s credibility assessment. He emphasised that the judge accepted the account had been consistent with background sources. He pointed out he had accepted that vulnerability was relevant to the credibility assessment. In that context, he argued, the judge had erred in failing to give any weight to the medical evidence. As said, the judge was provided with a psychiatric report prepared by Dr Ewa Okon-Rocha and the judge accepted her credentials as a consultant psychiatrist made her appropriately qualified to assess the appellant’s mental health. The judge was critical of the report, however, because the expert did not make any assessment of whether the appellant could be feigning or exaggerating her symptoms of PTSD, depression, panic disorder and anxiety and it appeared she had simply taken the appellant’s account at face value. The judge placed little weight upon the report as corroborating the appellant’s account because the report did not contain a critical and objective analysis.
8. Mr Georget agreed that the decision of the judge to treat the appellant as a vulnerable witness did not in any way tie his hands when it came to his critical assessment of the medical evidence. That was in line with the Presidential decision of the Upper Tribunal in SB (vulnerable adult: credibility) Ghana [2019] UKUT 00398 (IAC). Mr Georget pointed out that there was no reason to suppose that the expert did not consider the appellant’s story critically because she had the benefit of more than two years’ medical records containing an earlier diagnosis of PTSD.
9. Mr Georget argued the judge had erred by approaching the report on the basis that the appellant might be feigning and ignoring the possibility that she might not be feigning. Mr Georget accepted there were difficulties with his argument because the judge expressly directed himself that he needed to bear in mind the appellant’s mental health and vulnerability when assessing her evidence and he confirmed that, when making credibility findings, he had borne in mind her health and vulnerability (see [13.c] and [24]). However, the judge had not made any clear findings about whether the appellant suffers from PTSD or not.
10. Secondly, Mr Georget argued the judge had failed to carry out a holistic evaluation. For example, he did not make a finding as to whether the appellant had, as claimed, been forced into marriage at the age of 14. This was important because it provided the context for

assessing her future choices. The judge found the decision of the appellant, who was then with her husband, to leave Germany before their protection claim there had been determined showed that the appellant and her husband had been willing to make an unmeritorious asylum claim where it suited their purposes. The point was that the appellant had been in no position to oppose her husband's decision. A further example was the judge's reliance on the appellant's failure to claim asylum in Italy as a matter undermining her overall credibility because the appellant had been under the control of men at that time as well.

11. Mr Georget's third ground was that the judge treated credibility as an abstract matter and did not relate it to the facts. He acknowledged the judge's self-directions were impeccable but then suggested that the judge had treated his task as a balancing exercise.
12. Mr Howells argued that the judge's consideration of the medical report was entirely in line with the guidance provided in JL (medical reports - credibility) China [2013] UKUT 00145 (IAC), which the judge had referred to. It was open to the judge to give little weight to the report and it was implicit that he did not accept the appellant's claimed symptoms. Going on to the second ground, he said the judge had made findings on the major points of the account and he was not obliged to make findings on everything. It had not been disputed that the appellant was married and the judge's reasoning was sound. As to the third ground, the judge was aware that caution needed to be exercised and he was entitled to find the appellant's account incoherent and implausible. It could not be said the judge had ignored the positive parts of the account.
13. In response, Mr Georget said that his overarching submission was that the ground rules for assessing credibility in asylum appeals had not been followed and the judge should not have closed his mind to the possibility that the account was true when assessing the medical evidence.
14. I reserved my decision as to whether the decision of the judge contains a material error of law and, having done so, I have concluded that it does not and therefore that the appellant's appeal must be dismissed. My reasons are as follows.
15. As Mr Georget acknowledged, he faced an uphill struggle in showing that a judge who had directed himself impeccably had nonetheless fallen into error by failing to do what he explained he intended to do. In relation to the point about treating the appellant as a vulnerable witness, when it came to making his submissions orally, Mr Georget accepted that there was no inherent inconsistency in a judge treating an appellant as vulnerable and ultimately not being satisfied that the reasons behind that decision were fully established on the evidence.

There is perhaps a helpful parallel to be drawn with the situation in which there is an age dispute. It would be wise for the judge to treat the appellant as a child witness even though the judge might ultimately conclude for cogent reasons that the appellant was not a child.

16. I do not see any merit in the submissions regarding the judge's treatment of the report of Dr Okon-Rocha. He recognised her credentials as an expert. However, it was open to him to attach such weight to the expert's opinions as he deemed appropriate. He was clearly aware of the guidance provided in JL (China). In that case, the Upper Tribunal explained that the more a diagnosis is dependent on assuming that the account given by the appellant was to be believed, the less likely it was that significant weight would be attached to it (see [30]). It was therefore open to the judge to discount the weight he might otherwise have given to the medical report because, as he put it, the expert had not considered whether the appellant might have been feigning or exaggerating her symptoms.
17. Mr Georget's written grounds appear to suggest that the judge's conclusions were not only contradictory but arguably perverse and that he had, in effect, concluded the appellant had been feigning or exaggerating her symptoms. To be fair to the judge, he did no such thing. He simply explained why he was unable to give weight to the report of the expert as corroborating the appellant's account.
18. I accept that the expert had medical records showing that the appellant had been diagnosed with PTSD previously, apparently by her GP. The judge does not make any positive conclusions about this and I can see why this may have troubled Judge Scott Baker because, having explained why little weight could be given to the expert report, the judge should have explained why the other evidence suggesting the appellant may have PTSD did not bear on his overall fact-finding.
19. However, I am not satisfied that the judge's conclusions on credibility are thereby significantly undermined. The decision as a whole shows that the judge was familiar with the evidence and, significantly, that he reminded himself to bear in mind the appellant's vulnerability when assessing her credibility. A clear example is at [37] where the judge did not take the appellant's vagueness against her.
20. I agree with Mr Howells that the decision can be read as showing it was implicit that the judge had in mind that the appellant may have a degree of PTSD. In the overall circumstances, without evidence tying this into the particular narrative given by the appellant, the judge cannot be taken to have erred by failing to treat this as having significant weight as corroboration.
21. Mr Georget argued there was an error by the judge in failing to keep an open mind about whether the claim was true before finding the

report carried no weight. I consider the judge's approach is clear. He structured his credibility assessment under headings, explaining his reasoning in relation to each of a number of issues. As said, his treatment of the report was simply to explain why he did not give it positive weight. He then turned to matters which undermined the appellant's credibility. I see no error at all in this approach. I note that, in the next section, the judge treated the NRM decisions as neutral because he was not provided with either of them.

22. As for the judge's reliance on the appellant's decision to abandon her claim in Germany, I accept there was evidence which might have indicated that the appellant might have been under the control of her husband at the time such that the judge should have given reasons for explaining why he nonetheless gave this weight as undermining credibility. However, in [35] he did exactly that. He noted the appellant had given inconsistent evidence to the expert as to the reason for travelling to Germany in the first place. I consider the judge was perfectly entitled to regard this as a matter undermining the appellant's credibility.
23. Judge Scott Baker was also concerned the judge did not make a holistic assessment of the evidence. I have already dealt with the point about the appellant's mental health. Mr Georget highlighted the absence of any finding regarding the appellant's account of her marriage. He suggested this matter provided the "context" for the claim and explained some of the decisions made by the appellant subsequently. However, I agree with Mr Howells that this matter was not directly in dispute and, as noted, the judge pointed out the the background evidence of the patriarchal and conservative nature of Albanian society.
24. Nor is there any merit in the point that the judge treated his credibility assessment as a balancing exercise such that he thereby imported a much higher standard of proof. At [45] the judge is simply drawing together the various threads of his reasoning and showing he has taken full account of the matters which weigh for and against the appellant's credibility. He referred to the "appropriate" standard of proof. There is no basis at all for arguing he applied the wrong standard of proof.
25. Standing back and reading the decision as a whole, I consider the judge made no material errors of law. His self-directions were correct and he assessed the evidence with diligence. He gave clear explanations as to why he did not accept the appellant's account and those reasons were based on the evidence. He took account of the appellant's vulnerability and how that might have affected her evidence.

26. The appeal is therefore dismissed and the decision of the First-tier Tribunal dismissing the appellant's appeal on all grounds shall stand.

**NOTICE OF DECISION**

The Judge of the First-tier Tribunal did not make a material error of law and his decision dismissing the appeal shall stand.

**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 3 February 2020



**Deputy Upper Tribunal Judge Froom**