



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

Appeal Number: PA/05539/2019

THE IMMIGRATION ACTS

**On the papers
On 5 October 2020**

**Decision & Reasons Promulgated
On 8 October 2020**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

VB

(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge P-J S White ('the Judge') promulgated on 12 November 2019 in which the Judge dismissed the appellant's appeal on protection and human rights grounds.
2. Permission to appeal was initially refused by another judge of the First-tier Tribunal but granted on a renewed application by the Upper Tribunal, the operative part of the grant being in the following terms:
 4. The judge did not find the appellant credible and rejected her account of being trafficked and forced into prostitution in its entirety. It is apparent that one of the reasons the judge did not find the appellant credible is that he considered aspects of her account to not be plausible or probable. For example, at

paragraph 27 he stated that the chance of various events described in that paragraph occurring together seemed “very low indeed” and at paragraph 28 he stated that the appellant’s account required “a significant number of individually improbable things to go just right for her”.

5. At paragraph 38 the judge stated that although “perceptions of plausibility” are not always a safe or reliable guide, this is “tempered by the fact that I am here considering the supposed actions of a group of European criminals and an educated European appellant, rather than the cultural norms of a wholly strange society”. Arguably, the judge has not explained why he has taken the view that in a case concerning Albanian traffickers it is safer/more reliable to rely on “perceptions of plausibility” than in cases concerning certain other societies. Arguably, the judge has fallen into legal error in his approach to the reliability of his perception of plausibility.
6. All grounds are arguable.”
3. As a result of the Covid-19 pandemic directions were sent to the parties indicating a provisional view reached by the Upper Tribunal that it would be appropriate in this case to determine whether the Judge had made an error of law material to the decision to dismiss the appeal of the papers and providing an opportunity for the parties to make additional submissions in relation to the merits of their case if they wished to do so.
4. The Secretary of State filed a response dated 30 July 2020 indicating no objection to a remote hearing. No response had been received at the date for consideration of these matters from either the appellant or her representatives.
5. The Overriding Objective is contained in the Upper Tribunal Procedure Rules. Rule 2(2) explains that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues.
6. Rule 2(4) puts a duty on the parties to help the Upper Tribunal to further the overriding objective; and to cooperate with the Upper Tribunal generally.
7. Rule 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008 provides:
 - ‘34.—
 - (1) Subject to paragraphs (2) and (3), the Upper Tribunal may make any decision without a hearing.
 - (2) The Upper Tribunal must have regard to any view expressed by a party when deciding whether to hold a hearing to consider any matter, and the form of any such hearing.

- (3) In immigration judicial review proceedings, the Upper Tribunal must hold a hearing before making a decision which disposes of proceedings.
 - (4) Paragraph (3) does not affect the power of the Upper Tribunal to—
 - (a) strike out a party’s case, pursuant to rule 8(1)(b) or 8(2);
 - (b) consent to withdrawal, pursuant to rule 17;
 - (c) determine an application for permission to bring judicial review proceedings, pursuant to rule 30; or
 - (d) make a consent order disposing of proceedings, pursuant to rule 39, without a hearing.
8. It has not been shown to be inappropriate or unfair to exercise the discretion provided in Rule 34 by enabling the error of law question to be determined on the papers rather than in any other form of remote hearing. Nothing on the facts or in law is made out that makes consideration of the issues on the papers not in accordance with overriding objectives at this stage.

Background

- 9. The appellant is a national of Albania born on 4 April 1990. The Judge sets out her immigration history, the basis on which she claimed to be entitled to a grant of international protection and, having had the benefit of considering documentary and oral evidence, sets out findings of fact from [17] of the decision under challenge.
- 10. The appellant asserts the Judge failed to make a finding of fact in relation to two key events; in relation to what were identified perceived discrepancies about the appellant’s freedom to move around the property she was held at in Tirana and in relation to the appellant’s alleged escape from a hotel in Switzerland. The grounds assert the Judge ignored the appellant’s evidence regarding her method of escape. The appellant also asserts the Judge made a mistake of fact finding at [26] that the appellant travelled on her own passport for the journey to Switzerland suggesting in the grounds the appellant had never said she had her passport through this journey. The appellant also alleges that claiming to have travelled on her passport is different to saying she had it on her at that time. The Grounds assert the appellant had never at any time claimed she had control of the passport when she travelled to Switzerland but arguing in the alternative that even if she did it was not unlikely or incredible given the circumstances of the claim.
- 11. The appellant also assert the Judge failed to consider material evidence in failing to factor into the analysis of the substantial volume of medical evidence which is said to show a consistent account of trafficking, enforced prostitution and exploitation. It is asserted the Judge failed to take the material into account including the fact the appellant was being treated for PTSD.
- 12. The Grounds insert the Judges made irrational and perverse conclusions for the reasons set out in the document drafted in May 2020.

13. The Secretary of State in her response to directions dated 30 July 2020 asserts no arguable legal error for the reasons set out therein.

Error of law

14. It is not made out the Judge failed to consider all the written and oral evidence with the required degree of anxious scrutiny. It is necessary to read the decision as a whole. The Judge was not required to make findings in relation to every aspect of the evidence and it is not made out the Judge did not identify and consider relevant issues upon which adequate findings are made.
15. In relation to the assertion the Judge failed to make findings in relation to the two key elements referred to in Ground one, the relevant evidence was clearly considered by the Judge. At [19] the Judge notes unexplained inconsistency in relation to the appellant's evidence concerning the Tirana house in which the appellant claimed that she both had some freedom of movement within the house but also that she did not. The assertion the Judge failed to make findings in relation to the appellant's alleged escape from a hotel in Switzerland is dealt with at [22] in which the Judge writes:

“22. In relation to her eventual escape from the hotel in Switzerland the respondent queried why the window in a toilet would have been left unlocked, when the window in the appellant's room was firmly locked. The appellant says in her witness statement that there were always guards in the corridors. In her interview, after describing how she was sometimes allowed to move around the hotel, and chat to [J], she was asked whether there were any guards present. She said “No but they kept moving around the corridor on occasions [A] would not allow her to speak”. The officer evidently understood that answer as meaning there were no guards, because a little later she was asked why, if there were no guards, she did not try to escape, and replied that the guards were “from outside”. That leaves it rather unclear whether there were guards inside or not. Later in the interview, describing the actual escape on New Year's Eve, the appellant said the guards had come in from outside and were in the bar waiting for the change of the year. It appears from that there would normally be guards outside, rather than in the building, which would be contrary to what she said in her statement. Fortuitously, on the day of escape they were all inside, and not only inside but in the bar rather than keeping any sort of guard at all. If the appellant meant that there were normally guards both inside and out the lucky chance that they were all in the bar on the crucial evening is still more surprising. In any event, the presence of guards in the corridors would not explain why a toilet window would be left unlocked; it is not suggested that the guards supervised the girls when they use the toilet.”

16. In relation to passport the Judge writes at [26]:

“26. There are in my judgement other difficulties about the appellant's account. She says that she was taken to the hotel in

Switzerland by [A] and another person, whose name she did not know, but who was apparently a man. She had her own passport for the journey. The first part was by bus to Pristina and the second part by plane to Switzerland. By this time the appellant had already been beaten, detained and forced into prosecution in Albania, and would therefore have been under no illusion about why she was being taken to Switzerland. To travel by such public means, including through two international airports where there will be security staff, seems a very risky approach by traffickers, minimising their control and increasing the risk of an attempt to escape.”

17. The findings in relation to the actual escape from the hotel are set out at [27-28] in the following terms:

“27. The actual escape required first that [M], one of the clients, was willing to assist in escape, not just by [J], who had become his girlfriend, but also by the appellant as her friend, second that [M] somehow discovered that [A] would be somewhere else that night, and relayed that information to [J], third that the girls rooms, which she said were normally locked, were on this occasion left open, fourth that neither the appellant nor [J] had any clients at the crucial time, although normally they worked about 10 hours after lunch and fifth that all the guards were clustered in the bar and keeping no lookout. Clearly, none of these things individually is impossible, and some are less implausible than others, but they all seem unlikely, and the chance of all of them occurring together seems very low indeed.

28. Moreover, having escaped from the building was not the end of the appellant’s surprising good fortune. [M] was unwilling or unable to look after her, bar her first night, in Switzerland, but he was able to make arrangements, including presumably the payment of any fees, for the appellant to be taken to the United Kingdom, while [J] turned out to have a cousin in the United Kingdom who would be able to assist the appellant on arrival and the cousin, while apparently unable or unwilling to assist for any length of time, had a builder [MA] round next day to do some work, and he was both able and willing to take the appellant in and support her. From the reference in the medical notes to her living with a couple I must infer that [MA’s] partner has also been willing to accommodate and support the appellant long term. I note that no evidence was provided from either the cousin or the builder about the circumstances in which they met the appellant or their roles as good Samaritans. Again it seems to me that the appellant’s account requires a significant number of individually improbable things all to go just right for her.”

18. It is important that the Judge’s findings are read as a whole and not ‘cherry picked’ and criticised in isolation. The Judges overall finding is that the cumulative effect of negative issues that arise from the appellant’s evidence led to the appellant’s claim to international protection not being found to be credible. The Judge gives adequate

findings for this position based upon the numerous problems identified in the appellant's evidence. The appellant's grounds are selective and fail to address all the concerns recorded by the Judge. It is not made out the Judge's findings are in any way perverse or irrational.

19. In relation to the assertion of mistake of fact, as noted above at [27] the Judge properly notes the evidence given in written and oral in relation to these matters and makes findings upon the same. The grounds failed to identify in what manner the Judge has made a finding outside the range of those reasonably available to him on the evidence. It is not irrational for Judge to conclude that the appellant was claiming to have travelled using her own passport. The appellant was represented at the hearing and her claim in the grounds that what she was saying was that she did not have her passport throughout the whole of the journey, even though the evidence supports the findings made, could have been put to her but was not. Reading of the evidence indicates that the matter is as recorded by the Judge. It is not made out the Judge erred in law in commenting upon the fact that travelling on her own travel documents through international airports could have increased the chance of the appellant escaping or seeking help.
20. The Judge clearly considered the medical evidence and the assertion the Judge failed to do so is without arguable merit. There is specific reference to the documents between [30 - 34] and it is not made out that having done so the Judge ignored the medical evidence or failed to factor the same into the assessment process. It is not made out the approach adopted by the Judge to the medical evidence renders the Judges overall conclusions unsafe. The credibility of the claim was a matter for the Judge not the medics.
21. In relation to the assertion of irrational and perverse findings; it is not made out the high threshold of perversity is met in relation to this matter and nor is it made out that the findings made by the Judge are outside the range of those reasonably available to him on the evidence. It is not a decision in which the Judge has dismissed the claim as a result of minor concerns arising from the evidence but as a result of the Judge carefully analysing that evidence and considered whether the claim was made out to lower standard by reference to written and oral evidence and the relevant country guidance caselaw. Read as a whole and placed in context it is not made out the Judge erred in law in a manner material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in relation to this matter. The Judge's comments with regard to the plausibility of the claim are clearly within the range of those available to the Judge on the facts. Whilst the appellant does not agree with the Judge's conclusions, suggests alternative findings that she say should have been made, and seek a more favourable outcome to enable her to remain in the United Kingdom, this does not establish arguable material legal error.

Decision

- 22. There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

23. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 5 October 2020