



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

Appeal Number: PA/01695/2020 (V)

THE IMMIGRATION ACTS

**Heard at : Field House
On : 13 April 2021**

**Decision & Reasons Promulgated
On : 27 April 2021**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**EM
(Anonymity Order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Fitzsimons, instructed by Barnes Harrild & Dyer Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was skype for business. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

2. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision refusing her asylum and human rights claim.

3. The appellant is a citizen of Albania born on 25 October 1996. She arrived in the UK on 29 January 2016 and claimed asylum the following day. She was referred into the National Referral Mechanism (NRM) on 31 March 2016 as a suspected victim of trafficking, but a negative conclusive grounds decision was made by the Competent Authority.

4. The basis of the appellant's claim was that she was a victim of human trafficking and would be at risk on return to Albania as a result. She also claimed to fear her father. She claimed that her father was a violent man who had killed his cousin's wife in an honour killing and had been in prison as a result from 2003 to 2011. Her father told her that she had to get married to a man, D, who lived in France and when she refused, he beat her and locked her in a room. At the beginning of October 2015 her father took her to Kukas to arrange a passport and Albanian ID card for her and a few days later she left Albania with her brother and D's brother, in order to marry D. They travelled by plane to Italy and then by train to France and she was handed over to D who then took her by car to a house where there were three Albanian men who were drinking alcohol and who forced her to drink. She woke up the following day and found herself in bed with one of the men, A, who told her that D had sold her to him. A kept her in France for two days and then drove her to another house during the night where she was forced to work as a prostitute. She believed that that was when she was taken to the UK. She had to see six or seven clients a day and was forced to do that for three months, from October 2015 until the end of January 2016 when she managed to escape through the bathroom window. She reached a park and met an Albanian man there, H, with whom she subsequently had a relationship and had a baby, born on 15 October 2016.

5. The appellant's asylum and human rights claim was refused on 5 February 2020. The respondent did not accept the appellant's account of being forced into marriage by her father. Further, in light of information from the British Embassy in Tirana confirming that she had left Albania on 28 December 2015 on a flight to Italy using her Albanian passport and had not returned to Albania since then, the respondent rejected the appellant's claim to have been trafficked from October 2015 until January 2016 and did not accept that she had been forced into prostitution. The respondent did not accept that the appellant had a genuine subjective fear of return to Albania and concluded that she was at no risk on return to that country.

6. The appellant appealed against the respondent's decision and her appeal was heard in the First-tier Tribunal on 7 October 2020 by Judge Hembrough. The judge noted that the appellant had been interviewed by the police about her claimed ordeal and had been put in contact with an organisation called Hestia which provided support for victims of trafficking. She had also been referred to a number of other support organisations including the Women & Girls Network and Ella, all of which had provided letters of support. In addition, the judge had before him a psychiatric report from Dr C Obuaya and a country expert report from Dr E Tahiraj, as well as copies of Albanian court documents related to the appellant's father's conviction for murder in 2003. The judge heard oral evidence from the appellant.

7. The judge accepted the appellant's account of having witnessed the immediate aftermath of the murder committed by her father, when she was six years of age, and accepted that her father forced her into marriage with an older man whom she had never met. The judge also noted, and accepted, a record of the appellant having attempted suicide in Albania by tying bedsheets together but having been stopped by her mother. The judge accepted that the appellant was taken from Albania by her brother and D's brother to marry D in France. However, the judge was not satisfied that the appellant had given an accurate account of what transpired from that point on. He did not accept the appellant's claim to have been mistaken about the timing of her departure from Albania, given the significant disparity in dates and the period of time in which she claimed to have been held and forced into prostitution. The judge noted the fact that the appellant's account in relation to the trafficking was unsubstantiated and considered it significant that there was no evidence from H to confirm the timing of when they met. Given that the appellant was recorded by Hestia as having carried the Albanian court documents with her in her bag from Albania, the judge concluded that it had always been her intention to claim asylum abroad. The judge considered that the appellant's mental health issues arose from events in Albania and concluded that her account of being trafficked to the UK for the purposes of sexual exploitation was a fabrication. The judge accepted that the appellant would be at risk from her father if she returned to her home area, having disobeyed his wishes as regards the marriage to D and having had a child out of wedlock. He concluded that the appellant could safely and reasonably relocate to Tirana or elsewhere in the south of Albania where her father would not find her and that she would have access to the available reception and reintegration programmes for victims of trafficking. The judge considered that she would have access to support for her mental health issues and that there was no risk of re-trafficking. He accordingly dismissed the appeal on all grounds.

8. The appellant sought permission to appeal the decision to the Upper Tribunal on the following grounds: firstly, that the judge failed to have adequate regard to the medical and psychological evidence in respect of the appellant's memory and recall of the timing of her escape; secondly, that the judge erred by making his own findings on the cause of the appellant's mental health issues despite the medical evidence; third, that the judge erred by expecting corroboration of the appellant's account of being trafficked; fourth, that the judge had regard to irrelevant considerations in making his adverse credibility findings; fifth, that the judge inappropriately descended into the arena in his questions to the appellant; sixth, that the judge erred in finding that the accepted elements of the appellant's account did not place her at risk of re-trafficking or render internal relocation unduly harsh in accordance with the country guidance in TD and AD (Trafficked women) CG [2016] UKUT 92; and seventh, that the judge rejected the country expert's evidence without adequate reasons.

9. Permission to appeal was granted by the First-tier Tribunal on all grounds except five and six and the respondent provided a Rule 24 response opposing the appeal.

Hearing and submissions

10. The matter came before me and both parties made submissions.

11. Ms Fitzsimons focussed on the grounds upon which permission had been granted. With regard to the first ground, she referred to the medical evidence before the judge which confirmed that the appellant had complex PTSD and that her presentation was consistent with other victims of trafficking. She also referred to the statutory guidance under the Modern Slavery Act 2015 which confirmed that victims of trafficking often had difficulty recalling details and submitted that the medical evidence could have provided a plausible explanation for the varying dates and time period. The judge therefore erred by finding that it did not. As for the second ground the judge, when rejecting the claimed cause of the appellant's PTSD, failed to engage with the medical expert's opinion which was not only based upon his own observations but also the community care assessments and which followed the Istanbul Protocol. With regard to the third ground, the judge erred by expecting H to be a witness or to provide a statement, because there was no duty to corroborate and also because he had only met the appellant after the trafficking incident and she had not told him about it. The appellant provided a plausible explanation as to why she had not told him, because she was ashamed. As for the fourth ground, Ms Fitzsimons submitted that the judge's reasoning at [69], that the appellant would have accessed support earlier and that she would not have entered into a sexual relationship with H so soon after meeting him if her account of the trafficking was true, was a subjective judgment. The appellant had sought support from Hestia and other organisations and the judge's reasons for rejecting her credibility on such a basis were not made out on the evidence. With regard to the seventh ground, Ms Fitzsimons submitted that the judge gave no reason why she preferred the CPIN report to the country expert report, particularly when the country expert addressed the CPIN report and gave reasons why she believed the appellant was at risk on return.

12. Ms Everett, in her submissions, relied on the rule 24 response although she accepted the challenge in ground four and did not consider that the judge's findings at [69] could be upheld. She considered that that could be ring-fenced, however, and that the determination could still stand, as the judge had properly dealt with the medical evidence, he had treated the appellant as a vulnerable witness and he had made his credibility assessment against the medical evidence. The judge had adequately expressed his reason for drawing the adverse conclusions from the absence of evidence from H.

13. Ms Fitzsimons, in response, submitted that the error in ground four was material to the judge's overall credibility assessment. Further, the appellant had provided a good reason why the evidence of H was not relevant, as she had not disclosed the events to him.

Discussion and conclusions

14. It seems to me that the first two grounds are essentially a disagreement with the judge's adverse credibility findings in relation to the appellant's

account of being trafficked to the UK and with the adverse conclusions he drew from the discrepancy in the timing of the claimed events. It cannot be said that the judge failed to consider the appellant's circumstances and her vulnerability and mental health issues when making his assessment. Therefore, to assert that he should have reached a different conclusion on the basis of the medical evidence, is simply a disagreement with his decision. It is clear from [38] of the judge's decision that he was well aware of the appellant's vulnerable state and that he took care to treat her accordingly. It is also apparent from [51] and [52] that the judge tried to give the appellant every opportunity to provide a proper explanation for the difference between her account of the date she left Albania and the period she spent being forced into prostitution and the information from the British Embassy in Tirana. It is clear that the judge tried, as demonstrated at [51] and [65], to reconcile the discrepancies in her evidence with her mental health problems and the trauma of her claimed experiences, and, at [66], with the circumstances under which she was relating her account at the Home Office interview.

15. There can be no doubt from the judge's findings that he had full regard to the medical assessment in the psychiatric report from Dr Obuaya when considering the possibility of the appellant being mistaken about the timing of her trafficking experiences and he observed that Dr Obuaya was unable to offer any psychiatric explanation for the disparity in dates. I note that that reflects the psychiatric report at [86]. At [73] the judge gave consideration to the supporting letters from the organisations assisting the appellant and clearly it cannot be said that he failed to take that evidence into account. Again, the judge observed that none of those letters explored the issue as regards the appellant's date of travel. It seems to me that that is a relevant matter which the judge was perfectly entitled to consider, in particular given its significance and the fact that, as reflected by the evidence at Annex L, M and N of the respondent's appeal bundle, the appellant was advised by the Competent Authority about the discrepancy in her travel dates as far back as July 2019 and had thus had ample time to provide a response. Indeed, it is of some relevance to note that, aside from the letter from Ella's at page 76 of the appellant's appeal bundle, the letters from the other supporting organisations were not recent and all pre-dated the discovery of the travel dates and the negative conclusive grounds decision and were made at a time when the discrepancy in her account had not been an issue.

16. For all of these reasons I do not find merit in the first two grounds of appeal and I reject the assertion that the judge made his adverse credibility assessment without having adequate regard to the medical and psychological evidence and that he erred in his approach to the medical evidence. As for the third ground, and the assertion that the judge erred in requiring corroboration from the appellant of her trafficking experience, I do not agree that that is what he did. At [67] the judge merely observed that, as opposed to her claim relating to her father's violence and the forced marriage, her account of the trafficking experience was unsubstantiated. Contrary to the assertion in the grounds, it seems to me that the judge was perfectly entitled to consider that H could have provided some valuable supporting evidence, not to confirm the appellant's account of the trafficking - which it is said that she did not share

with him – but to confirm the circumstances in which they met and how he assisted her. The judge noted, at [68], that the appellant was dismissive when questioned about the nature of her continued contact with H and he was entitled to conclude that she was not being forthcoming in that regard.

17. With regard to the fourth ground, Ms Everett accepted that the judge's adverse comments at [69] were wrongly made and not sustainable but she considered that that did not undermine the judge's overall credibility findings. I do not agree with Ms Fitzsimons' submission that the judge's overall credibility assessment was infected by those comments to the extent that it had to be set aside. It is clear that the judge gave ample reasons for rejecting the appellant's account of having been trafficked, irrespective of such comments, and I do not accept that such considerations infected his overall findings. It is clear that the judge considered that the discrepancy in the appellant's account of the period of her ill-treatment was a matter that he considered could not be reconciled in any way and he referred to other material matters which had also not been explained by the appellant, at [70] and [71], the latter of which significantly supported his view that the trafficking claim had been fabricated as an addition to the actual events which had led to her departure from Albania.

18. With regard to the final ground, that appears to be an argument with the weight that the judge accorded to the expert report, which was a matter for him and which he considered in full and explained with cogent reasoning. The judge had full regard to the country background information and the relevant country guidance when assessing the risk on return to the appellant and he gave cogent reasons as to why he considered that she could safely and reasonably relocate to another part of Albania away from her father. He was perfectly entitled to conclude as he did.

19. For all of these reasons I find no merit in the grounds. Judge Hembrough's decision was a detailed and comprehensive one which took account of all the evidence and provided clear and cogent reasoning. I do not find any errors of law in his decision requiring it to be set aside and I accordingly uphold his decision.

DECISION

20. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Anonymity

The anonymity direction made by the First-tier Tribunal is maintained.

Signed: S Kebede
Upper Tribunal Judge Kebede

Dated: 16 April 2021