



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

Appeal Number: PA/05001/2019

THE IMMIGRATION ACTS

**Heard remotely via Skype for Decision & Reasons Promulgated
Business
On 7 May 2021** **On 24 May 2021**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**JM
(ANONYMITY DIRECTION MADE)**

Appellant

AND

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. By a decision promulgated on 28 May, Upper Tribunal Judge Gill set aside the decision of the First-tier Tribunal. Her reasons are as follows:

“1. The appellant, a national of Albania born on 16 December 1999, appeals against a decision of Judge of the First-tier Tribunal R Handley who, in a decision promulgated on 19 December 2019 following a hearing on 27 November 2019, dismissed her appeal against a decision of the respondent of 13 May 2019 to refuse her claim made on 28 August 2018 for asylum and humanitarian protection.

The issues

2. The following are the issues I have to decide (hereafter the "Issues"):

- (i) whether it is appropriate to decide the following questions without a hearing:

- (a) whether the decision of the judge involved the making of an error on a point of law; and
 - (b) whether the judge's decision should be set aside.
- (ii) if I conclude that it is appropriate to proceed without a hearing and if the answer to both questions (a) and (b) above is "yes", then whether the appeal should be remitted to the First-tier Tribunal or whether the decision on the appeal should be re-made in the Upper Tribunal.

3. I come to decide these issues after the following have been issued by the Upper Tribunal (Immigration and Asylum Chamber) (the "Tribunal") after the "lockdown" due to the Covid-19 pandemic commenced on 23 March 2020:

(i) A "Note and Directions" by Mr C M G Ockelton, Vice President of the Tribunal dated 18 March 2020 and issued by the Upper Tribunal on 20 March 2020. Para 1 of the "Note and Directions" stated that, in light of the present need to take precautions against the spread of Covid-19, the Vice President had reached the provisional view, having reviewed the file in this case, that it would be appropriate to determine questions (i)(a) and (b) above without a hearing.

Para 2 of the "Note and Directions" issued directions which provided for the party who had sought permission to make submissions by 2 April 2020 in support of an error of law and on the question whether the decision of the First-tier Tribunal ("FtT") should be set aside if error of law is found; for any other party to file and serve by 9 April 2020 submissions in response; and, if such submissions in response were made, for the party who sought permission to file a reply no later than 16 April 2020.

Para 3 of the "Note and Directions" stated that any party who considered that despite the foregoing directions a hearing was necessary to consider questions 1(a) and (b) may submit reasons for that view no later than 9 April 2020.

(ii) A decision by Upper Tribunal Judge O'Connor on an application made on the appellant's behalf for time to be extended for compliance with para 2 of the Vice President's directions from 2 April 2020. Judge O'Connor extended the time limit to 30 April 2020.

4. I have received the following documents from the parties:

- (i) from the appellant (hereafter the "Appellant's Submissions"):
 - (a) "Further Submissions in assertion of error of law" submitted by Rashid & Rashid Solicitors by email dated 1 April 2020 timed at 22:38 hours; and
 - (b) "Further representations" dated 29 April 2020 from Mr R Parkin, of Counsel.
- (ii) From the respondent (hereafter the "Respondent's Submissions"), "SSHD's written submissions on error of law" from Mr I Jarvis, Senior Presenting Officer, dated 8 April 2020 and

submitted to the Upper Tribunal by email of the same date timed at 11:33 hours.

(iii) The appellant's "Response to R.24 Statement" dated 20 May 2020 (hereafter the "Appellant's Response").

To the extent that any of the above submissions were late, I extend time for compliance with the relevant direction and admit them.

5. Para 2 of the Respondent's Submissions states that the respondent's response was based on the appellant's grounds of appeal and that the respondent was not aware of any further written submissions. It is therefore clear that the respondent had not had sight of the Appellant's Submissions.

6. I considered whether the respondent should be given an opportunity to consider the Appellant's Submissions and make submissions in response. I decided to proceed to consider the Issues because I concluded that there would be no prejudice to the respondent for the following reasons: (i) Mr Jarvis had accepted, in the Respondent's Submissions, that the judge had materially erred in law and that his decision should be set aside; (ii) Mr Jarvis had made submissions on the question whether the appeal should be remitted to the FtT or whether the decision on the appeal should be re-made in the Upper Tribunal; and (iii) accordingly, no useful purpose would be served by postponing the making of a decision on the Issues in order to allow the respondent to respond to the Appellant's Submissions.

7. I therefore proceeded to consider the Issues notwithstanding that the respondent had not had sight of the Appellant's Submissions at the time that the Respondent's Submissions were made.

Issue (i) - whether it is appropriate to proceed without a hearing

8. In his submissions dated 29 April 2020, Mr Parkin contended that the appeal should be heard at an oral hearing. At para 4 of his submissions dated 29 April 2020, he stated that, given the fact-heavy nature and extent of the issues involved in this appeal, it is likely that the Tribunal would be significantly assisted by oral arguments from the parties, in that, it is probable that some points may not have been anticipated in the drafting of his representations. Secondly, given that findings of fact are likely to be or may become relevant in this appeal, it may also be that the Tribunal wishes to hear oral evidence, particularly if, in the event of the appeal succeeding, the Tribunal wishes to re-make the decision itself.

9. In the Respondent's Submissions, Mr Jarvis did not advance any objection to the Tribunal proceeding to decide the Issues without a hearing.

10. I have carefully considered the appellant's representations on the question whether it is appropriate to proceed without hearing. I have considered the Presidential Guidance Note No 1 2020: "Arrangements during the Covid-19 Pandemic" and the overriding objective.

11. Having considered everything very carefully, I have concluded that it is appropriate to proceed to decide the Issues without a hearing, for the following reasons:

(i) It is not enough to say that the Tribunal will be significantly assisted by oral arguments from the parties and that it is probable that some points may not have been anticipated in the drafting of written submissions. That can be said in respect of many, if not most cases. It does not follow that a just decision cannot be reached without a hearing.

(ii) Given that this decision is limited to the Issues and given that the grounds of appeal to the Tribunal do not raise any ground that will require oral evidence to be heard in order to decide the Issues, there is no question of my making findings of fact or hearing oral evidence at this stage.

(iii) Although this is a case which involves a trafficking claim, the fact is that Mr Jarvis has accepted, in the Respondent's Submissions, that the judge materially erred in law and that his decision should be set aside.

Issues (i) (a) and (b) - whether the judge erred in law and whether his decision should be set aside

12. Although Mr Jarvis has accepted that the judge's decision should be set aside, it is necessary to explain the basis of the appellant's asylum claim and summarise relevant aspects of the decision letter and the judge's decision. This is necessary not only in order to set in context the respondent's concession but also to set in context the ambit of the re-making of the decision on the appellant's appeal.

Summary of the appellant's asylum claim

13. The appellant's asylum claim was based on her claim that she had been trafficked to the United Kingdom and that she feared persecution in Albania at the hands of her father and the traffickers.

14. The appellant said that her family was very strict and she was not allowed to go anywhere without someone accompanying her. She stated that she began a relationship on Facebook with a man named Aurel in December 2017. On 17 May 2018, she went to Macedonia with her father and brother who were going there on business. She had arranged to meet Aurel in Macedonia without the knowledge of her father and brother. They left her in a boutique whilst they went to a supermarket. She messaged Aurel to come and collect her. He arrived 20 minutes later and they both then travelled to Skopje airport and flew to Belgium on her own passport. They lived together in Belgium for 2-3 weeks after which she was invited to a party at a house where Aurel left her with a group of men who exploited her that night and for a further 3 months. She was forced into prostitution and locked in a room in a cellar. She was then brought to the United Kingdom in the back of a lorry but she managed to escape when the lorry driver got out because he had a flat tyre.

15. The appellant said (para 33 of the decision letter) that her father had told her that because she had fled he now disowned her and if he was to see her again he would kill her, burn her alive and cut her flesh because she had brought shame and left Albania without his permission. However, she had also stated that she had not spoken to her family since 17 May 2018 when she was in Belgium (para 34 of the decision letter).

Summary of the decision letter

16. At paras 29 and 32 of the decision letter, the respondent stated that the appellant had not substantiated her relationship with her trafficker and that she was a victim of trafficking/forced prostitution. However, the respondent proceeded to consider whether the appellant should be given the benefit of the doubt and concluded that she should, stating, at para 43 of the decision letter, that the respondent accepted the appellant's nationality, her evidence about her relationship with her trafficker and that she was a victim of trafficking/forced prostitution.

17. It is clear, from paras 33-39 and para 43 of the decision letter, that the respondent rejected the appellant's claim concerning her fear of her parents.

18. The respondent also considered that the appellant's fear of her family and traffickers was not well-founded because she considered that the appellant would be able to obtain sufficient protection from the Albanian authorities (paras 47-59 of the decision letter) and that she would be able to internally relocate (paras 60-72 of the decision letter). The respondent stated that the appellant had failed to demonstrate that her family have either the power or influence to locate her throughout Albania (para 61) or that her father, traffickers and Aurel have any ongoing interest in her or clear motivation in pursuing her (para 62 of the decision letter).

Summary of the judge's decision

19. In summarising the decision letter at paras 11-18 of his decision, the judge noted (at paras 13 and 14) that the respondent had stated that the appellant had not substantiated her relationship with her trafficker and that she was a victim of trafficking/forced prostitution. This is based on paras 29 and 32 of the decision letter.

20. However, there is no mention in the judge's decision of the respondent's concessions at para 43 of the decision letter.

21. The judge found that the appellant had not established her relationship with her alleged trafficker and rejected her claim to have been trafficked. He did not accept her claim that her father would want to harm her if she returned to Albania (para 41). He then summarised aspects of MK (Lesbians) Albania CG [2009] UKAIT 00036 (para 42) and TD and AD (trafficked women) CG [2016] UKUT 92 (para 43) as well as a report entitled "Country Policy and Information Note: People Trafficking, Albania: March 2019" (para 44) before stating, at para 45:

"45. As indicated, I do not accept that the appellant has been a victim of trafficking but even if I am wrong in reaching that conclusion I find that there are facilities available to victims of trafficking in Albania."

22. The judge therefore dismissed the appellant's asylum and humanitarian protection claims.

Grounds of appeal

23. The grounds may be summarised as follows:

24. The judge erred in law in going behind the respondent's acceptance in the decision letter that the appellant was a victim of trafficking/forced prostitution and her relationship with Aurel. The judge's alternative finding at para 45 of his decision, that even if he had reached a contrary conclusion, he would have dismissed the appeal "as there are facilities available to victims of trafficking in Albania" was fundamentally undermined by the error in going behind the respondent's concession. In addition, the judge gave very limited consideration to the criteria in TD and AD which requires consideration of various factors in order to decide whether sufficient protection is available and whether it would be unduly harsh for an individual to relocate. In the instant case, a number of these factors were engaged, for example, the social status and economic standing of the appellant's family, the state of her mental health and her age.

Assessment

25. Whilst it is clear that the judge noted paras 29 and 32 of the decision letter, he appeared not to have been aware that the respondent had proceeded to consider whether the appellant should be given the benefit of the doubt and had stated, at para 43 of the decision letter, that the respondent accepted not only the appellant's nationality but also her evidence about her relationship with her trafficker and that she was a victim of trafficking/forced prostitution.

26. At para 5 of the Respondent's Submissions, Mr Jarvis stated that it was evident from the Presenting Officer's minute of the hearing that there was no attempt to withdraw the respondent's concessions at para 43 of the decision letter and that cross-examination at the hearing was only based on the appellant's alleged problems with her family and what difficulties there would be for her on return to Albania. This is consistent with the judge's summary of the appellant's oral evidence in cross-examination, at paras 24-30 of his decision.

27. I am therefore satisfied, as contended by Mr Parkin in the Appellant's Submissions and as accepted by Mr Jarvis in the Respondent's Submissions, that the judge went behind the respondent's concessions at para 43 of the decision letter by considering the credibility of the appellant's evidence about her relationship with her trafficker and her evidence that she was a victim of trafficking/forced prostitution.

28. On this basis, I am satisfied that the judge's assessment at paras 33-37 of the credibility of the appellant's evidence concerning her relationship with Aurel and that he and others were responsible for trafficking her to the United Kingdom, cannot stand.

29. I am further satisfied that the judge's rejection of the appellant's evidence concerning her relationship with, and fear of, her family cannot stand because this finding was based on his overall assessment of her credibility, including his assessment of the credibility of her evidence concerning her relationship with Aurel and her claim that she had been trafficked.

30. I also agree with Mr Jarvis that the judge's assessment at para 45 of his decision is not truly a finding in the alternative as he did not engage with the question whether it is reasonable for the appellant to internally relocate.

31. It follows that the judge's assessment and findings at paras 32-45 cannot stand. I set aside his decision to dismiss the appellant's asylum claim, humanitarian protection claim and the appellant's related Article 3 claim.

Issue (ii) - whether the appeal should be remitted to the First-tier Tribunal or whether the decision on the appeal should be re-made in the Upper Tribunal.

32. At para 8 of the Respondent's Submissions, Mr Jarvis stated that the respondent is neutral about whether the decision on the appellant's appeal should be remitted to the FtT or whether the decision on the appellant's appeal should be re-made in the Tribunal.

33. At para 25 of his submissions dated 29 April 2020, Mr Parkin sought a remittal of the appeal to the FtT stating that this appeal will require extensive findings of fact and that it is not entirely clear whether any of the judge's findings are capable of being preserved. At para 4 of the Appellant's Response, Mr Parkin stated that it is difficult to see how the Upper Tribunal could make re-make the decision itself, given the agreement reached that findings cannot be preserved.

34. I have carefully considered the parties' submissions. As I have stated at para 31 above the judge's assessment and findings at paras 32-45 cannot stand. In effect, this means that none of his findings in relation to the appellant's asylum claim, humanitarian protection claim and the appellant's related Article 3 claim can stand.

35. However, it does not follow that this appeal will require extensive findings of fact. In view of the respondent's concessions at para 43 of the decision letter, credibility is limited to the appellant's evidence concerning her relationship with her family; in particular, her evidence as summarised at para 15 above. Her account as summarised at para 14 above has been accepted by the respondent.

36. The grounds of appeal to the Tribunal did not challenge the judge's assessment at paras 46-47 of his decision of the appellant's Article 3 claim based on her medical condition and at paras 48-49 of her Article 8 claim. Although para 10 of the grounds mentions "the state of her mental health", this was in connection with the assessment of the appellant's trafficking claim, and not her Article 3 claim based on her medical condition.

37. It follows that the re-making of the decision on the appellant's appeal falls to be limited to the following:

- (i) the credibility of the appellant's evidence concerning her relationship with her family; in particular, her evidence as summarised at para 15 above;
- (ii) whether there would be sufficient protection for her in Albania against any acts of persecution (if there is a real risk of such acts) by her father and/or her traffickers and/or against being re-trafficked; and
- (iii) whether she would be able to safely and reasonably relocate internally.

It follows that this appeal will not require extensive findings of fact.

38. In addition, the judge's summary of the oral evidence he heard, at paras 24-30 of his decision, stands as a record of the evidence that was given in cross-examination before the judge.

39. Given what I have said at paras 37-38 above and having regard to paras 7.2-7.3 of the Practice Statement and the overriding objective, I am not satisfied that para 7.2 (a) or (b) of the Practice Statements apply. I am satisfied that it is appropriate and just that the decision on the appellant's appeal be re-made in the Tribunal.

40. For the same reasons, and bearing in mind, in particular, that the Tribunal will have the benefit of the judge's summary of the appellant's oral evidence before him and, further, having regard to the Pilot Practice Direction and the UTIAC Guidance Note No 1 of 2020, I am provisionally of the following view:

(i) if there is no further oral evidence, that the forthcoming hearing in this appeal can and should be held remotely by telephone.

(ii) If there will be further oral evidence, that the forthcoming hearing in this appeal can and should be held remotely by Skype for Business, provided that the Tribunal is by then able to arrange for the appellant and any witnesses to be assisted by an interpreter (if an interpreter is required), such remote hearing to take place on a date to be fixed.

Notice of Decision

41. The decision of the First-tier Tribunal involved the making of errors on points of law such that the decision to dismiss the appeal on asylum grounds, humanitarian protection grounds and the related Article 3 claim is set aside. The decision to dismiss the appeal on the appellant's Article 3 claim based on her medical condition stands and her Article 8 claim stands."

2. Following a Transfer Order, the resumed hearing took place before me remotely on 7 May 2021. Mr Walker, who appeared for the respondent at the resumed hearing, told me that the Secretary of State accepts that the appellant's appeal should be allowed on asylum and Article 3 ECHR grounds (in the latter case, subject to Judge Gill's decision at [41] above).
3. In the circumstances, I allow the appeal on asylum and Article 3 ECHR grounds.

Notice of Decision

The appellant's appeal against the decision of the Secretary of State dated 13 May 2019 is allowed on asylum and Article 3 ECHR grounds

Signed

Date 7 May 2021

Upper Tribunal Judge Lane

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.