



IAC-FH-CK-V2

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02398/2020**

THE IMMIGRATION ACTS

**Heard at Field House
On 25 January 2022**

**Decision & Reasons Promulgated
On 09 March 2022**

Before

**UPPER TRIBUNAL JUDGE ALLEN
DEPUTY UPPER TRIBUNAL JUDGE MONSON**

Between

**GN
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Griffiths, instructed by Duncan Lewis & Co Solicitors
(Sackville House London)

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Albania. She appealed to the First-tier Tribunal against the respondent's decision of 20 February 2020 refusing her asylum claim. There had been a previous adverse decision in 2016 and an unsuccessful appeal against that decision, heard by Judge Nolan.
2. The basis of the appellant's claim was that she had been subjected to violence as a child from her father, and had been forced to marry against her will in 2006. She and her husband had two children. He had borrowed money to purchase livestock but was unable to repay the debt and left to work in the United Kingdom. The appellant claimed to have been threatened by the people to whom her husband owed money and therefore escaped from Albania with the assistance of an agent. She was taken to Belgium and forced into prostitution. She was able to escape with

her children and travelled to the United Kingdom in 2015 with the help of an Albanian couple. Subsequently she had had her third child, in October 2017.

3. The judge in 2016, in dismissing her appeal, found her to lack credibility. The fresh claim, the decision in respect of which is the subject of this appeal, stated that her previous inconsistencies were due to the effect of the trauma she had experienced in Belgium and that she suffered with PTSD and major depressive disorder and that she had difficulties with information processing and memory. It was said that she was at a real risk of suicide if returned. She provided a medical report from a psychologist, Dr Green. There was also an expert report from Ms Antonia Young. There had been a psychiatric report written by Dr Hajioff before Judge Nolan at the earlier hearing. In this report it was suggested that the appellant was suffering from some symptoms of depression and some evidence of injury consistent with her account. Judge Nolan had accepted the findings of Dr Hajioff but did not accept that any of the injuries or psychiatric problems were as a result of the alleged events giving rise to the appellant's claim but had been caused by other events or means than those put forward by the appellant.
4. The evidence of Dr Green was that the appellant had cognitive difficulties in respect of information processing and memory. He said that she was not able properly to instruct her solicitors or engage meaningfully in a court process. She continued to suffer with a severe illness. As a consequence of this a litigation friend was appointed for the appellant. The judge in the instant appeal did not hear oral evidence from the appellant. He had regard to the contents of Dr Green's report and applied the Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance.
5. The judge reminded himself of the Devaseelan guidance in light of the earlier decision in 2016. It was said that there were three respects in which this appeal differed significantly from the 2016 decision. First was the point that the appellant had been assessed as having difficulties with information processing and memory. Secondly, she had been diagnosed with PTSD and a major depressive disorder and was at risk of completed suicide if returned and thirdly, that she now had her third child.
6. As regards the second point, the judge noted that the previous determination referred to a diagnosis of PTSD which had been made and therefore did not find that this element differed significantly from the 2016 decision. The judge said that he did not find cause to deviate from the conclusions of the judge in 2016. He said he was conscious that the appellant had been diagnosed in July 2019 as suffering with difficulties in processing information and her memory. He said that whilst making allowances as he was required to do with regard to the question of credibility, he found that the appellant's explanation still lacked credibility and feasibility with regard to her reasons for leaving Albania with her two children. He agreed with the concerns of the earlier judge regarding the appellant's apparent fear of reprisals from debt collectors to herself and her children and the fact that nevertheless she was able to borrow money

to leave Albania, which would, in itself, have satisfied the outstanding debt.

7. The judge considered it to be of significance that Dr Hajioff, whilst assessing the appellant, appeared to have made no findings with regard to the capacity of the appellant and her ability to recall events and provide instructions and evidence both written and oral. It is relevant to note at this point that the judge did not have Dr Hajioff's report before him, but had only the summary of what was said in that report to be found at paragraph 53 of Judge Nolan's decision in 2016. With regard to the fact that Dr Hajioff appeared not to have made any findings concerning the appellant's capacity and ability to recall events and provide instructions and evidence, he stated that he was unable to conclude that her ability to recall events was impaired in 2016 to the extent by which it was apparent to the Tribunal in these proceedings. As a consequence, he did not find reason to deviate from the adverse credibility finding of the earlier judge in respect of the trafficking claim. Nor did he accept the account in respect of threats from debtors in the appellant's home area which were her motivation for leaving Albania for the United Kingdom.
8. He concluded that the appellant would be able to obtain sufficient protection from the Albanian authorities. His assessment of all the background evidence led him to conclude that there was a sufficiency of state protection available to the appellant to address her fear of persecution from non-state actors. He had had regard to the guidance in Horvath [2000] UKHL 37. He had considered not just the generality of the sufficiency of protection but the specific circumstances of the appellant.
9. He noted the shortcomings of the police in Albania as having been explained by Antonia Young, whose expertise in this area he accepted. He had also carefully considered the guidance in TD and AD [2016] UKUT 92 (IAC). He said that the background evidence showed that there was a functioning police force and judicial system which met the practical standard described by the House of Lords in Horvath. He found that the government would take reasonable steps to protect the appellant by deploying its resources to operating this system. He did not find that it could properly be said that there was either an inability or unwillingness to protect the appellant. As a consequence, he did not accept that the claim to be at risk on return was made out and that in any event, there was a sufficiency of protection. He also found that it would be reasonable for the appellant to relocate if necessary to another location in Albania, bearing in mind two relevant CPINs from 2018 and 2021, the latter confirming that lone women could internally relocate to Tirana and would be entitled to state benefits and social housing with children being given priority in the school registration system. He noted that the appellant had demonstrated an ability to engage with support networks in the United Kingdom and could continue to do so in Albania. He bore in mind that it was said that her level of education was low and her skills were limited but that there was support provided in respect of further education, assistance with life skills and employment combined with childcare assistance.

10. The judge then went on to consider the human rights issues. With regard to the Article 3 health issue and the question of suicide risk on return, he had carefully considered the report of Dr Green. He had no reservations in respect of Dr Green's qualifications and experience. He noted that Dr Green's opinion was that the appellant's current risk of self-harm and suicide was high and that her potential risk of making a suicide attempt in the future was significantly very severe. He had opined that this risk would be at its height when the appellant was returned to Albania. However, the judge noted that earlier in the supplemental report of Dr Green when asked about suicidal ideation the appellant said that, whilst frequently having thoughts about suicide, she indicated that she would not make further attempts on her life because she felt a keen sense of responsibility to her children. She had last attempted to kill herself in Belgium and stated that she felt determined to stay alive for her children. There was evidence from 2017 from Dr Shah and from the East London NHS Foundation Trust Assessment and Brief Treatment Team in 2020 that the risk of suicide was stated in the former as low and in the latter that the appellant had no risk of self-harm and no suicidal ideation. The judge as a consequence was not satisfied that the risk of suicide was sufficiently high on return so as to mean that Article 3 was breached. He considered that the report of Dr Green had failed to address the positive factors of the appellant returning to Albania in respect of culture and language and a lack of consideration of mitigating features such as social support, access to health assistance and medical accompaniment on the flight. He was satisfied that she would have access to and be able to engage with the health services in Albania. The test set out in AM (Zimbabwe) [2020] UKSC 17 was not met.
11. The appeal was also dismissed in respect of Article 8. The judge did not accept there would be very significant obstacles to the appellant's integration into Albania and that therefore the requirements of paragraph 276ADE(1)(vi) were not met, and in considering Article 8 outside the Rules he found that the balance fell on the side of the public interest. In this regard, he carried out a full proportionality assessment and concluded that the balance sheet on a proportionality assessment was firmly against the appellant. The appeal was as a consequence dismissed.
12. The appellant sought and was granted permission to appeal on the basis that it was arguable that the judge had materially erred for the reasons set out in the grounds, namely a misapprehension of the medical evidence and in particular the impact the diagnosis had on her memory and her ability to re-integrate into Albania.
13. In her submissions, Ms Griffiths relied on the grounds and also on her skeleton argument/speaking note which was provided on the day of the hearing.
14. In the first ground it was argued that the First-tier Judge had failed to give adequate reasons for coming to the same conclusions as the judge in 2016 that the appellant's account lacked credibility. It was argued that such reasons as were given by the judge were inadequate. He had given no reason for rejecting the trafficking aspect, whether by reliance on the

earlier judge's findings or not. He referred only to a lack of credibility and feasibility in the reasons for leaving and fear from debt collection but said nothing on the trafficking issue.

15. Ms Griffiths relied on what had been said in AM (Afghanistan) [2017] EWCA Civ 1123 with respect to the proposition that expert medical evidence could be critical in providing explanations for difficulties in giving a coherent and consistent account of past events. Dr Green's report included a clinical opinion that the appellant had scored highly on the thought disorder scale, such individuals having disorganised, confused, fragmental or bizarre thinking, and also had difficulties with information processing and executive functioning skills. The appellant had reported bouts of forgetfulness since being trafficked, and her PTSD was of such severity that it affected her cognitive functioning and she was not able properly to instruct her solicitors nor engage meaningfully in a court process at the current time and required immediate clinical secondary or tertiary level input.
16. Ms Griffiths made the point that the judge did not have the earlier report of Dr Hajioff before him and the brief summary of it in the 2016 determination did not give any clear description of what the report contained nor did it contain anything other than the diagnoses made. By contrast, Dr Green's report contained significant neuropsychological assessments and was indeed commissioned in the first instance for that purpose specifically. The judge had failed to explain why Dr Hajioff's conclusions were preferred insofar as he considered there to be an inconsistency between the two reports.
17. In addition, the judge's consideration of whether or not to depart from the findings in 2016 on credibility was made exclusively by reference to Dr Green's report and there was no mention or consideration of the letter of a trainee psychologist, Shpresa Vitija, the appellant's medical evidence or the report of Dr Young. It was argued that on the first two of these it was significant that since 2017 the appellant had been separately diagnosed with PTSD and was receiving treatment which Dr Green's later report appeared to show as having started to improve her symptoms. That therapy had been on the basis of her account of what happened to her in Albania and the trafficking and it was argued that this pointed against the cause of her trauma being something else as had been found by the judge in 2016.
18. Also, Ms Young had given an expert opinion on the plausibility of the appellant's account and explanations for aspects of Judge Nolan's findings in 2016 in respect of plausibility, the lesser significance of dates in Albania, which might explain the appellant's confusion around them, stating that not knowing names of men from her husband's village should be considered in light of the patriarchal nature of the society and giving objective explanations for why her not going to the police was objectively normal. The judge had not mentioned these parts of the report. In sum, it was argued that the credibility findings could not stand.
19. As regards ground 2, where it was argued that the judge had erred in failing to provide adequate reasons for finding a sufficiency of protection,

the judge had failed to take into account what was said in TD and AD that though there was in general a Horvath standard sufficiency of protection, it would not be effective in every case and it was necessary to consider the particular circumstances of the individual in every case. It was said at headnote (e) of TD and AD that the expectation that the reception and re-integration programme for victims of trafficking could not generally said to be unreasonable was qualified if the individual had vulnerabilities such as physical or mental health issues, as was the case here. There was also reference to a need for careful assessment of all the circumstances to determine whether a woman could live alone and a list of specific factors set out in headnote (h) to be considered when assessing risk and access to sufficiency of protection. Only one of the relevant aspects had been considered by the judge and the rest had been ignored.

20. In addition, the judge had not engaged with relevant parts of Antonia Young's report, which painted a very different picture from the findings that he had made. If he had rejected the report, he had to say why and likewise, if his conclusions were not consistent with it, it was necessary to say why. Reference was also made to elements of the background evidence including the U.S. State Department Human Rights Report of 2019, the U.S. State Department's Trafficking in Persons Report of 2020 and the report from the Legal Aid Board of Ireland. This evidence contradicted the findings of the judge.
21. As regards internal relocation, the same errors were highlighted in respect of risk on return and sufficiency of protection, in particular the failure to engage with or give reasons for disregarding the report of Ms Young. Also, there were relevant passages in the 2018 and 2021 CPINs making such points as the government's capacity to investigate trafficking being described as limited, that the police do not always provide sufficient assistance when approached by families of trafficking victims and that there was a lack of resources for long-term care and re-integration.
22. In ground 3 it was argued that the findings in respect of Article 3 and Article 8 were flawed. With respect to the Article 3 findings, Dr Green had borne in mind what the appellant said about not making further attempts but explained why nevertheless suicide risk remained severe because of the risk of response to crisis and impulsivity. The fact that she remained unwell despite the treatment she had engaged in was relevant and the context was entirely different from being in a place of fear in Albania. Ms Young's report contained a detailed analysis of the obstacles which the appellant would face in accessing treatment in Albania and the picture she painted was again very different from the findings of the First-tier Judge.
23. In his submissions, Mr Tufan argued that the credibility point was central. The judge in 2016 had dismissed the appeal and had considered a medical report, though that had not been before the judge in the instant case. It was summarised at paragraph 53 of the decision of Judge Nolan. There was nothing referred to there to say that the appellant had impaired memory problems but there was a reference to PTSD. The earlier judge would have referred to any mention of memory impairment if it had been in that report. Dr Green did not see when the memory impairment

started, so it was questioned how Judge Nolan's findings could be disturbed. It was clearly something that had happened afterwards. Dr Hajioff would have mentioned it.

24. It was relevant to bear in mind that Ms Young had been criticised in a number of Upper Tribunal decisions and by the Court of Appeal and the High Court, on the basis that she had acted like an advocate, but it was the case that the judge had accepted her expertise in this case. She had accepted that the credibility was for the Tribunal and therefore the use for her report was limited as it was based on the appellant's credibility.
25. The judge had given proper consideration to Dr Green's report, referring to it and applying the relevant guidance to it and considering the points made in it. There was no substance to ground 1.
26. Ground 2 was impacted on by the credibility findings as it was not in issue if the appellant was not credible, but the judge had considered the relevant country guidance and found there was a sufficiency of protection, as had been held there. There was in general a sufficiency of protection in Albania even if the appellant were credible. The human rights issues had been considered and addressed by the judge in some detail. It seemed that the two CPINs had not been brought to the judge's attention. The judge's findings and reasoning were sound and in line with the earlier findings. The best interests of the children had been considered. The decision was sound.
27. By way of reply, Ms Griffiths agreed that credibility was important, but Ms Young had explained that return now would place the appellant at risk irrespective of her history, so the matter needed to be considered in the alternative. The respondent seemed to accept that there was not much in Dr Hajioff's report, in contrast to the two substantial reports from Dr Green. Also, Dr Hajioff's report had not been before the judge. Ms Young had dealt with the earlier criticisms in her report and there had been no challenge to her report before the judge. She accepted that credibility was for the judge but that did not weaken what she said about plausibility. Dr Green's evidence had been set out in the context of Article 3 and not with regard to the points in ground 1. Objective observations had been made about how the appellant presented, and the report was not just based on what she had said. Findings had been made by the judge, but the evidence underpinning it had not been identified. The appeal should be allowed.
28. We reserved our decision.
29. We see force to the arguments set out in respect of ground 1 and the challenge to the credibility findings. It is a matter of concern that the judge attached the weight that he did to a report of Dr Hajioff which he never saw. All he had was the summary of it at paragraph 53 of the decision in 2016 of the earlier First-tier Judge. As a consequence, he did not know what Dr Hajioff's terms of reference were nor what he might or might not have said about the appellant's ability to assimilate information and her memory and issues concerning processing information which were referred to by Dr Green. It was, in our view, inappropriate to speculate

and to assume from the absence from the precis of Dr Hajioff's evidence that it could be taken that no findings were made concerning the appellant's capacity and her ability to recall events and provide instructions and evidence. It is perfectly feasible that such issues were not part of his remit and he might have been asked to comment solely on PTSD and related issues. We simply do not know and it is inappropriate for us to speculate, as it was for the judge. As it is, we are left with an evaluation on credibility which significantly draws on a precis of a report the judge did not see. The judge was of course required as he did to follow the Devaseelan guidance, but there was minimal consideration in the credibility findings of the evidence of Dr Green, which is simply referred to as having been considered. There was of course a fuller evaluation of Dr Green's evidence in the human rights context, but his evidence did not have the consideration to which it was entitled in the evaluation of credibility.

30. We also agree that insufficient consideration was given to Ms Young's evidence in the assessment of credibility. The judge accepted her expertise, and she made a number of points about the plausibility of the appellant's evidence which required to be considered. As Ms Young properly accepted, credibility is of course a matter for the judge, but equally, having accepted her expertise, we consider that he was required to consider the reasons she gave for the plausibility of the account and set those against the other evidence in coming to his conclusions. As a consequence, we find that the credibility findings are flawed as is contended.
31. We also agree that the judge erred in the findings on sufficiency of protection. A more nuanced approach was required than that provided by the judge. There was an insufficiency of analysis of the appellant's individual circumstances bearing in mind her problematic health conditions and a general failure to address in particular the application of the guidance in headnotes (e), (f) and (h) of TD and AD. Again, the detailed reasoning set out in Ms Young's report is summarised very briefly at paragraph 64 of the judge's decision. Again, we consider that the judge materially erred.
32. As regards ground 3, again, we have concerns about the judge's reasoning in this respect. The judge needed to address the point made by Dr Green that despite the appellant's statement that she would not make further attempts on her life, nevertheless suicide risk remained severe because of the risk of response to crisis and impulsivity. More needed also to be said in addressing the evidence provided by Dr Young on the difficulties the appellant would face in accessing medical treatment in Albania.
33. In sum therefore, we conclude that the judge erred in law in respect of the matters raised in all three grounds. We consider that in the circumstances, the degree of remaking is such that the matter will need to be reheard in its entirety in the First-tier Tribunal by a different judge at Hatton Cross.

Notice of Decision

The appeal is allowed to the extent set out above.

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.

A handwritten signature in black ink, appearing to be 'Allen', written in a cursive style.

Signed

Date 8 February 2022

Upper Tribunal Judge Allen