



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

Appeal Number: PA/03338/2020

**THE IMMIGRATION ACTS**

**Heard at Bradford (via Microsoft  
Teams)  
On 22 December 2021**

**Decision promulgated  
On 17th January 2022**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

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

Appellant

**and**

**KP**

**(Anonymity direction made)**

Respondent

**Representation:**

For the Appellant: Mr Tufan, a Senior Home Office Presenting Officer.

For the Respondent: Mr Dhanji instructed by Rashid & Rashid Solicitors.

**DECISION AND REASONS**

**1.** The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Ali promulgated on 14 April 2021 in which the Judge allowed KP's appeal on asylum, articles 2 and 2 ECHR grounds, and pursuant to paragraph 276ADE of the Immigration Rules.

## **Background**

2. KP was born on 18 December 1995 and is a female citizen of Albania who claimed to have arrived in the UK on 29 June 2017. A claim for asylum was made on 4 July 2017 but refused on 20 May 2020. It is the appeal against that refusal that came before the Judge.
3. The Judge records at [11] of the decision KP's representative informing the Tribunal that she was no longer relying upon the blood feud element of the claim due to the fact that KP was no longer with her partner.
4. Having had the benefit of considering the documentary and oral evidence the Judge sets out findings of fact from [34] of the decision under challenge.
5. Those findings, excluding the section in which the Judge sets out the headnote of AM & BM (trafficked women) Albania CG [2010] UKUT 00080 (IAC) at [41] are in the following terms:

34. The Respondent does not accept that the Appellant's claim falls under the Refugee Convention. The refusal letters does not accept that women, including women fearing domestic/gender-based violence and/or being forced into an arranged marriage, form a Particular Social Group in Albania. However, the refusal letter at para 38 – 39 accepts that women and women fearing domestic violence/abuse shower and immutable (or innate) characteristic that cannot be changed. I then turned to the detailed analysis set out in *DH (Particular Social Group: Mental Health) Afghanistan [2020] UKUT 223 (IAC)*, confirming that the correct approach to PSG's is as follows:

*'68. In accordance with the objective of the Refugee Convention, the concept of a PSG should be interpreted in an inclusive manner by determining that exists on the basis of either an innate or common characteristic of fundamental importance i.e. the five protected characteristics approach ('ejusdem generis') or social perception, rather than requiring both'.*

I therefore find that the Appellants immutable (or innate) characteristics, is accepted by the SSHD do place her within a PSG and she does not have to demonstrate an additional 'social perception' requirement.

35. The starting point is that the Respondent has accepted the Appellant's nationality and the core of her account which is that she fled Albania in genuine fear of being forced into an arranged marriage by her abusive father. Before fleeing, she had told her father that she was in a long-term relationship with another man out of wedlock. Therefore given those facts are not disputed I find the same applies.
36. Mr Moriarty indicated as set out at paragraph 11 of my determination that he would not be pursuing the blood feud element of the Appellant's claim is that relationship has ended. Therefore, this is not a matter which I need to take any further or make findings on.
37. However, what is relevant is whether I accept the Appellant's evidence that her relationship with [F] has genuinely ended or not. This is relevant for the purpose of assessing whether there would be significant obstacles to the Appellant's integration on return to Albania. I see no reason not to accept the Appellant's evidence that the relationship is ended because I find that she has been a witness who has given consistent, detailed and credible evidence about the problems that led her to flee Albania, and this is a fact which has been acknowledged by the Respondent, in accepting as credible the core of her account. Mr Stainthorpe questioned the Appellant in cross examination

about her contact with [F] and the circumstances in which her relationship ended. I find that although the Appellant was somewhat unclear in her evidence about the exact date the relationship ended, this can be attributed to the fact that she is suffering with Mental Health issues. In support of this there is a psychiatric report from Dr Azmathulla Khan Hameed (referenced at pages 11 to 34 of AB). The report highlights the following; the Appellant is suffering from severe anxiety requiring treatment, Adjustment Disorder and Major Depressive Syndrome [para 6]; the Appellant's mental health is likely to significantly deteriorate on return to Albania, to the extent that she would be 'unlikely to engage or access mental health care, irrespective of whether it was potentially available to her, because of her psychological state of mind' [paras. 7.10-7.11] and whilst the Appellant is fit to give oral evidence, she might become distressed to the extent that the accuracy of her testimony might be affected [paras. 7.29 - 7.31]. There has been no challenge to the expertise of the expert and I therefore attach significant weight to the expert report.

38. I then turned to the issues of whether there is sufficiency of protection for the Appellant and whether she can internally relocate to another part of Albania, were she to return.
39. I bear in mind that this is the appeal of an individual whose account I have found to be credible and she is someone who is suffering from mental health illness and as such is a vulnerable person. I have taken into consideration the Appellant's evidence in particular evidence set out at paragraphs 17 to 25 of her witness statement. I accept that she is telling the truth and I accept her evidence to be credible. I factor into that she has brought shame to her family and has broken the Kanun Law. I have also considered her evidence at paragraph 29 of her witness statement where she states that her cousin [CP] as a police in her village of Kuka. Her evidence of her cousin working for the police is not something that was challenged by Mr Stainthorpe in court this and thus I accept that she is telling the truth and accept that her cousin worked for the police. I find that given that she has brought shame to the family and in light of my findings made I find that in those circumstances then sufficiency of protection will not be available to the Appellant.
40. Taking into account the above findings I also find that there will be no sufficiency of protection for the Appellant and I find that she cannot internally relocate for the following reasons.
41. ...
42. I have underlined the parts of the head notes which I consider to be relevant. Whilst this is not a case of the Appellant being a victim of trafficking the findings from the case law are relevant in assessing the Appellant's situation on return to Albania. I have accepted the Appellant's claim as being credible and set out my reasons above. In applying the case law to the circumstances of her case I accept that her family have disowned her. I also find that as a person who was brought shame to the family honour, ran away to be with the man that she chose and she has two children outside of marriage (both of whom are still very young) which would mean that she would have considerable difficulty in reintegrating into her home area if she were to be returned back to Albania. Thus, the above finding is supported by, paragraph b of the headnote.
43. I have to consider whether the Appellant in light of having no family support will be able to access shelters on return. I do not accept that the Appellant can access shelters as referred to, in paragraph e of the headnote. This is because the Appellant suffers from mental health illnesses as set out in the expert report of Dr Hameed. I have already accepted the evidence of Dr Hameed and have already stated that I attach significant weight to the report. The Respondent did not challenge his expertise and Mr Stainthorpe did not challenge the fact that the Appellant was indeed suffering from mental health issues. I find in light of the above it is inevitable that Appellant would indeed suffer from an exacerbation of her mental health problems.

44. I also find that any availability of shelters would be inadequate for her, and I refer to the Respondent's own CPIN (People Trafficking - March 2019) on this matter, which states, there are very few chances for long-term support for really serious cases (the CPIN paragraph 11.3.1). I consider that it reasonably likely that the Appellant poor mental health would only exacerbate and become more severe without any support and so she would not have the long-term help and support that she would require in Albania.
  45. In dealing with the issue of internal relocation and I therefore accept that she has no support network available to her in Albania. Without family support and with 2 young children she will be vulnerable and exposed. The Appellant's evidence is that her cousin works for the police and so would be able to locate her. In addition, I consider the following factors as being important, she has been disowned, she has basic education, there is no evidence before me that she was in employment prior to her arrival in the UK, she is likely to suffer discrimination as someone who has had children outside of marriage and thus are prospects of employment are likely to be poor. In any event I find that her poor mental health will have a detrimental impact on her ability to even attempt to access work as this will be an impediment for her to obtain work. If the Appellant cannot obtain employment, then she will be unable to afford accommodation and thus that would render her homeless and destitute.
  46. Given the above I find that the Appellant's circumstances and vulnerabilities means it is reasonably likely she will be persecuted or harmed by her father and her family. He is very similar to that of the second Appellant in the case of *TD and AD* who the Upper Tribunal found would not be able to cope on return to Albania (reference is made to paragraph 171 - 172 of *TD and AD*).
  47. Turning to the rest of the matters raised as part of this appeal I find that the Appellant is a "suicide risk" and I attach weight to paragraph 7.13, page 14 of Dr Hameed's report which supports the Appellant's claim of suicide, he notes, *'Given [Ms P] and stable mental state, a return to Albania may lead to a further deterioration of her mental health and increases suicide risk as she has mentioned about the suicide attempts'*. Thus I find that this would be a breach of Article 3 of the ECHR. Her claims under Article 3 somewhat overlap with her claims under Article 8. I find that if she is returned with 2 young children back to Albania, there will be a significant obstacle to her integration.
  48. I find the following in reference to paragraph 276 ADE of the Immigration Rules. I find that she has not lived in the UK for 20 years (paragraph 276 ADE (1) (iii); she is over 18 and thus fails to meet the requirements of paragraph 276 ADE (1) (iv); she is over 18 but not under 25 and fails to meet the requirements of paragraph 276 ADE (1) (v). I find that there are significant obstacles to the Appellant's integration. I refer to the findings I have already made and find that given her mental health issues this will have a significant obstacle to her integration paragraph 276 ADE (1) (vi).
6. The Secretary of State sought permission to appeal which was granted by another judge of the First-tier Tribunal who was satisfied that there was arguable error of law in the decision of the Judge in that he appears to have overlooked a 25 February 2021 review in which issues were raised as to the reliability of the conclusions of the medical report of Dr Hameed noting the Judge stating at paragraph 37 of his Decision that there was no challenge to the evidence and thus he attaches significant weight to the same.
  7. KP has filed a Rule 24 Response dated 17 June 2021.

### **Error of law**

8. The Secretary of States in her review, dated 25 February 2021 in relation to the medical evidence stated:

- a. **Independent Psychiatric Report by Dr Azmathulla Khan Hameed [AB 11-34].** The Respondent has had regard to the Independent Psychiatric Report produced by Dr Azmathulla Khan Hameed. The Respondent notes that Dr Hameed in his report at paragraph 6, stated under heading of 'Psychiatric History' at 6.1 that the Appellant mental state has worsened in recent months due to the uncertainty in relation to her immigration status. However, at the end of the paragraph Dr Hameed stated that the Appellant finds it difficult to cope with stress of her immigration status and pregnancy. Inherently, Dr Hameed contradicted himself when he stated the sole cause of mental condition worsening was due to uncertainty in Appellants' immigration status. Throughout the report, Dr Hameed based his opinions and conclusions mainly emphasising on the Appellants uncertainty to her immigration status and has not given enough weight that the Appellant was 35 weeks pregnant.
- b. The Respondent notes that Dr Hameed in his report at paragraph 6.3, stated that the Appellant's GAD-7 score 18/21, which is severe. Most notably, Dr Hammed confirms that the screening tool does not form the basis of his diagnosis but merely informs it. Therefore, no weight is attached in this regard.
- c. The Respondent notes that Dr Hameed in his report at paragraph 6.4, stated that the Appellant's PHQ-9 score 19/27, which is moderately severe. Most notably, Dr Hammed confirms that the screening tool does not form the basis of his diagnosis but merely informs it. Therefore, no weight is attached in this regard.
- d. The Respondent notes that Dr Hameed in his report at paragraph 7.5, stated that various medicines can be used in treating Appellant's mental health including Sertraline for her depressive and anxiety-related symptoms. Notably, Dr Hameed mentioned that the Appellant is already taking Sertraline 50mg/day. Dr Hameed has not mentioned who prescribed this medicine, under what circumstances, which GP or NHS Trust etc. Therefore, the report does not adequately and comprehensively address this crucial issue of Appellant's mental health.
- e. The Respondent notes that Dr Hameed in his report at paragraph 9.1, stated that the Appellant needs to go to her GP in order to review treatment. On the contrary, the Appellant has already been to a medical practitioner in the UK/ NHS where she has been prescribed Sertraline. Consequently, Dr Hameed should have enquired about the medical records of the Appellant and then make the comments on why it is necessary to review treatment. It is clear Dr Hameed did not have any sight of any medical documents relating to the Appellant's mental health apart from the Sertraline he mentioned (*supra*).

- f. The Respondent also notes that Dr Hameed's report spends a great deal of time focussing upon the issue of what causes of depression, symptom of depression nature and degree of depression, treating depression, risk assessment, travel risk, general overview of mental health, availability and accessibility of treatment in Albania etc. The Respondent does not consider that the report by Dr Hameed adequately deals with the issues raised in the RFRL.

Furthermore, there is no evidence on the day of this review that the Appellant is receiving any professional medical treatment, support, therapy, medication save for Sertraline [AB/35-37(Prescription) – illegible] etc. for her mental health issues described in Dr Hameed's report.

**9. Dr Hameed's Conclusion section in the medical report, which is criticised by the Secretary of State, reads:**

**9. Summary, Conclusion and Opinion**

- 9.1 [KP] currently presents with symptoms consistent with an Adjustment Disorder (Mixed Anxiety and Depressive Reaction) in accordance with the WHO International Classification of Diseases ICD 10th Edition F43.22. [KP] would need to go to her GP in her local area in order to review treatment. In my professional opinion, she requires treatment using psychological intervention as a first line treatment such as the Improving Access to Psychological Therapy ("IAPT"). The IAPT service which is available in primary care is based on the principles of evidenced-based psychological therapies, routine outcome monitoring, regular and outcomes focused supervision. In terms of medication, I would recommend evidence-based treatment with an antidepressant of the Selective Serotonin Reuptake Inhibitor SSRI class, as recommended by the National Institute of Clinical Excellence ("NICE") for treatment of her depressive and anxiety symptoms. She is currently on sertraline 50mg/day. The medication and side effects are being monitored by the GP. As she is pregnant she needs to be closely monitored by the midwife and Obstetrics department.
- 9.2 In my professional opinion, [KP] is not fit to travel due to her current unstable mental health. She is likely to put herself and others at significant risks if she were to be forced to return to Albania. She will be unable to guarantee her own safety were consideration to be given to deporting her to Albania and she may well put others at risk in her attempt to prevent her deportation. Her mental health may deteriorate suddenly if faced with deportation resulting in her becoming severely agitated, aggressive and extremely disruptive inflight which is in clear violation of the CAA travel policy.
- 9.3 [KP] is a vulnerable woman who has demonstrated a considerable personal fortitude in travelling to the UK and is attempting to establish a life in the UK. Migration in itself is an unsettling, stressful experience that involves severe disruption to many aspects of individuals' lives. It is inevitably followed by a prolonged period of

adaptation and acculturation, processes that may be more or less difficult depending on the reasons for migration (e.g., economic vs. forced), available economic and social resources, cultural distance from the new society (especially language), and levels of discrimination and hostility faced.

- 9.4 Although [KP] denies any suicidal plans at present, however it would be worth bearing in mind that her mental health is likely to deteriorate significantly which in turn may put her safety at risk. Separating her from her social networks in the UK were she to be deported to Albania, is likely to have a significant impact on her mental health with the associated increasing isolation and risks. In Albania she might face extreme difficulties as she is not wanted by her close ones and family. She will deteriorate in her mental health if went back to the environment where she will be rejected and undermined as she will have 2 children without being married.
- 9.5 The ethos of mental healthcare has changed over the years. The focus of the therapeutic intervention is now, wherever possible, on community-based treatment rather than hospital based treatments even for people with the most serious mental health problems. There is also an accepted moral imperative (codified in both the Mental Health Act and the Capacity Act) that treatment should be provided in the least restrictive setting possible. Most people who would until recently have been admitted into a psychiatric hospital for long periods were not admitted anymore or only admitted very briefly. It is therefore inappropriate to define the seriousness of a mental illness on the basis of need for admission. Need for admission would depend more on the local model of care for people with mental disorders, resources available to treat someone in the community, availability of inpatient resources and type of inpatient resources rather than on the individual patient's clinical characteristics. More fundamentally, the clinical presumption is that admission should be avoided if at all possible.
- 9.6 Current guidelines for good clinical practice also emphasise protecting individual rights through providing the least restrictive treatment option. This is reflected in the new Mental Health Act and Mental Capacity Act legislation, and is consistent with an ethos of avoiding inpatient admission or detention under the Mental Health Act where possible. In this context, it is therefore inappropriate to base judgements of the seriousness or severity of mental illness on 'the need for inpatient admission'. The Royal College of Psychiatrists define 'serious mental illness' as a mental disorder that renders the individual unable to engage constructively in the society, unable to care for themselves and unable to work, i.e. in relation to the level of impact on function.
- 9.7 In my professional opinion, I would recommend that [KP] is monitored by the GP and health care professional in order for her to review the appropriate treatment and side effects. Since she is pregnant and has mental health issues she needs to be referred to the CMHT for monitoring of mental state. This will ensure that her mental health, progress and response to treatment are being monitored. In the meantime, she can

access the NHS Walk-in Centre for support or attend her local Accident and Emergency department if she is in crisis.

- 10.** Permission to appeal was granted in relation to the narrow basis on which application for permission to appeal had been sought. Although Mr Tufan referred to other issues which he claimed may indicate legal error been made by the Judge, these were not matters in relation to which permission to appeal had been sought in the application nor granted, and no formal application to amend the grounds of permission to appeal were made.
- 11.** The Judge specifically refers to the two reviews undertaken by the Secretary of State at [14] indicating that their content was taken into account as part of the decision-making process.
- 12.** The Judge was not required to set out the full text of the reviews as to do so would result in a substantial and unnecessarily long determination. There is no challenge to the Judge's finding that the appellant was found to be a witness of truth.
- 13.** The Judge notes at [43] that he accepted the evidence of Dr Hameed and was attaching significant weight to the report. Weight was a matter for the Judge, and it has not been shown that the weight the Judge gave to this evidence was any way irrational or unfair. The Judge notes the Secretary of State's representative did not challenge Dr Hameed's expertise nor the fact that the appellant was suffering from mental health issues. The Judge's finding that it is inevitable the appellant would suffer an exasperation of her mental health problems is clearly a finding within the range of those available to the Judge on the evidence.
- 14.** In his Rule 24 response KP's representative writes:

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#### RULE 24 RESPONSE

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1. Following the grant of permission by FtTJ Andrew, dated 12 May 2021, the Appellant ("A") and her two dependent children will oppose the Respondent's ("SSHD") appeal against the determination of FtTJ Ali on 14 April 2021, allowing the Appellant's appeal on asylum grounds.
2. It is noted that SSHD's RFRL accepted the core of A's account, which is that she fled Albania on 21 January 2017 in genuine fear of being forced into an arranged marriage by her abusive father. Therefore, the credibility of A's core accounts were not in dispute by the time FtTJ Ali heard her appeal on 2 March 2021 and the FTT determination further confirms the FtTJ's reasons for finding her generally credible at §[37].
3. Following from the above, it is submitted that FtTJ Ali's determination sets out the correct approach to the evidence and submissions at §[10], which is consistent with the case of Budhathoki (reasons for decision) [2014] UKUT 00341, which confirms, inter alia, as follows:

"...We are not for a moment suggesting that judgments have to set out the entire interstices of the evidence presented or analyse every nuance between the parties. Far from it. Indeed, we should make it clear that it is generally unnecessary, unhelpful and unhealthy for First-tier Tribunal judgments to seek to rehearse every detail or issue raised in the case. This leads to judgments becoming overly long and confused. Further, it is not a proportionate approach



to deciding cases. It is, however, necessary for First-tier Tribunal judges to identify and resolve the key conflicts in the evidence and explain in clear and brief terms their reasons for preferring one case to the other so that the parties can understand why they have won or lost...”

4. It is further noted that the FTT determination correctly confirms at §[14] that FtTJ Ali had in mind that the SSHD sought to rely on two Respondent’s reviews in resisting the appeal (i.e. including the Respondent’s review which sought to criticise some aspects of Dr Hameed’s psychiatric report, dated 21 January 2021).
  5. Following from the above, it is submitted that the FTT determination is entirely correct in noting at §[37] that there was ‘no challenge to the expertise of the expert’ (emphasis added), in the sense that the SSHD’s reviews and submissions did not seek to suggest that Dr Hameed is anything other than a suitably qualified and experienced psychiatrist.
  6. Similarly, it is submitted that FtTJ Ali is correct in noting at §[43] that the Respondent did not challenge Dr Hameed’s expertise and the Presenting Officer did not challenge the fact that A is suffering from mental health issues. It is reiterated that the Respondent’s review and submissions sought only to criticise some aspects of the psychiatric report, not the expertise of the author or the actual formal diagnoses.
  7. It is further noted that, contrary to the suggestion in the Respondent’s application for permission, FtTJ Ali set out at §[45] a range of highly relevant factors, not limited to A’s mental health, that would make it unreasonable to expect her to internally relocate within Albania with her two young dependent children.
  8. To the extent that the Respondent now seeks to argue that the FTT determination failed to specifically address the issues raised in the Respondent’s review dated 25 February 2021, it is noted that the Respondent will be well aware, from the Presenting Officer’s records, that these apparent issues with the psychiatric report of Dr Hameed were responded to in detail in oral submissions on behalf of the Appellant, noting in essence that:
    - a) Dr Hameed’s report correctly confirms that the screening tools referred to are used to inform his assessment but do not dictate his conclusions;
    - b) Dr Hameed is entirely right to suggest, at paragraph 9.1, that A should go to her GP in order to review her treatment, which does not suggest that he was unaware of her existing contact with her GP;
    - c) On the contrary, it is clear from paragraph 7.33 of the report that Dr Hameed is well aware that A has been receiving treatment via her GP. What Dr Hameed is suggesting is that this should be reviewed and, elsewhere in the report, he notes that further mental health intervention is likely to be required;
    - d) It is not for the psychiatric report to ‘address’ the RFRL, particularly in circumstances in which much of the focus of the RFRL is on country conditions. Instead, the psychiatrist properly focused his report on areas falling within his expertise.
  9. Further or in the alternative, if the Upper Tribunal considers that the FTT determination should have dealt more specifically with the issues raised in the Respondent’s review, it is noted that the relevant review does not seek to criticise Dr Hameed’s findings in relation to A’s risk of suicide, with the effect that the findings in the FTT determination at §[47] should stand in any event.
  10. The Upper Tribunal is respectfully invited to refuse the Respondent’s appeal.
- 15.** It was not suggested the contention in the Rule 24 reply, that matters that had been raised during the hearing and responded to mirror those on which permission to appeal was sought, is wrong. It is appreciated Mr Tufan indicated he had not seen the Rule 24 response,

but the tribunal had and it was served upon the Secretary of State, and no application was made for the same to be provided or for any additional time to be provided for it to be considered.

- 16.** The obligation upon the Judge in this appeal was to consider the evidence with the required degree of anxious scrutiny and to make factual findings supported by adequate reasons. A reading of the determination shows this is what the Judge did, including taking into account the Secretary of State's criticisms of the evidence in the review. There is no challenge to the appellant's presentation in relation to her mental health condition and it is important to read the determination as a whole to understand how the Judge undertook the required holistic assessment of all aspects of the appeal before concluding that the appeal should be allowed. The fact the Secretary of State may disagree with those conclusions does not mean that the Judge ignored any aspect of the evidence when arriving at them. It may be that another judge who considers the evidence may come to a different conclusion but that is not the required test.
- 17.** In light of it not being accepted that the Judge did not consider all the available material, including the reviews, it is inappropriate for this tribunal to interfere in the Judge's findings unless material legal error is established for any other reason within the confines of the grounds on which permission to appeal was sought and granted.
- 18.** As noted in the Rule 24 response, even if the Judge should have dealt with the issues raised in the review in a more comprehensive manner, it has not been shown that it may have made any difference to the Judge's overall findings. There is no specific challenge in the grounds in relation to the assessment of the risk of suicide and so any error, even if the same had been established (which I do not find it has) would not have been material.
- 19.** Whilst the Secretary of State may disagree with the Judges assessment and believe that the matter should have been considered more fully than it was, I do not find that legal error material to the decision to allow the appeal has been made out.

## **Decision**

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

Anonymity.

- 21.** 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 23 December 2021