Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/02738/2013

THE IMMIGRATION ACTS

Heard at North Shields
on 12th August 2013

Determination Promulgated
on 13th August 2013

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

GJYLIJE HALILAJ

Respondent

Representation:

For the Appellant: Ms Harrison of Halliday Reeves Law Firm.
For the Respondent: Mr Mangion - Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Bircher promulgated on 7th May 2013 in which she allowed Ms Halilaj's appeal against a direction for her removal to Albania on both asylum and human rights (Article 3) Grounds.

2. The Secretary of State sought permission to appeal alleging a material error by the Judge in the chronology of events as a result of which her finding Ms Halilaj was trafficked is not sustainable.

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Discussion

3. In her summary of the evidence Judge Bircher stated Ms Halilaj flew from Albania to Germany [22]. From there she travelled to Ireland and attempted to gain entry to Ireland at Dublin Airport, but was refused entry and returned to Germany [34]. In Germany she met four Albania males who told her to accompany them as they could find work for her. They took her to her hotel to work as a prostitute [34-5]. Whilst working for the men she was moved around places in Germany, France, and mostly Belgium, but was never allowed out unless accompanied by the men [36]. This appears to be a recording of Ms Halilaj's evidence regarding the chronology of events.

4. At paragraphs 52 and 53 of the determination, however, Judge Bircher made the following findings:

> 52. I am satisfied that arrangements were put in place for the appellant to be trafficked to the UK as a prostitute. I recognise that she did not seek asylum in Germany and Belgium also attempted to enter Ireland …….
>
> 53. The appellant at this stage may well have been under the control of the traffickers who assisted her to go to Ireland possibly because they deemed it easier to illegally enter the UK. This approach would be consistent with later arrangements to send her to Newcastle to claim asylum because it was safer and or easier.

5. The grounds argue, with some justification, that the chronology in paragraph 53 is at odds with Ms Halilaj's own evidence as she claims that he was only after she returned from Ireland that she met the men in Germany. I find that if Ms Halilaj had not met these men until she returned from Ireland the finding that she may have been under the control of traffickers at the time of seeking entry to Ireland is perverse.

6. Similarly, Ms Halilaj's own evidence was that she was assisted by "good Samaritans" who helped as her escape from those controlling her, drove her to London, and brought her a ticket to Newcastle. The Judge's finding that she was trafficked into the United Kingdom is contrary to this and Ms Halilaj's own evidence that she was not. She claimed she entered the United Kingdom with the assistance of those who offered to help as later confirmed in paragraph 62 of the determination. The Judge's findings are contrary to the evidence and perverse.

7. The Secretary of State acknowledges that a safe and sustainable finding that Ms Halilaj was held as a prostitute in Germany, and trafficked to France and

Belgium, may put her at risk on return to Albania as a vulnerable woman although this finding is unsafe as a result of the material errors made by the Judge.

8. It was accepted that the findings referred to above are contrary to the evidence and I find a material error of law made on the basis of the failure to properly consider the evidence, failure to understand and apply that evidence, and findings made being affected by perversity, when the evidence is properly considered.

9. The determination shall be set aside with there being no preserved findings. The appeal shall be remitted to the First-tier Tribunal for, having considered the Senior Presidents Practice Direction, this is an appeal in which Ms Halilaj has yet to have a fair hearing as the evidence she relies upon has not been shown to have been properly considered.

10. The following directions shall therefore apply to the future conduct of this appeal:

    i. The appeal shall be remitted to the First-tier Tribunal sitting at North Shields to be heard, on the first available date, by a Designated Judge of that Tribunal or a senior salaried First-tier Judge only, to be nominated by Designated Judge Zucker. Time estimate three hours.

    ii. The appellant and respondent shall file any additional evidence they wish the First-tier Tribunal to consider no later than seven days before the hearing. Witness statements shall stand as the evidence in chief of the maker.

    iii. An Albanian interpreter is required.

Signed…….
Upper Tribunal Judge Hanson

Dated the 12th August 2013