



**Upper Tribunal  
(Immigration and Asylum Chamber)  
Number: AA/00528/2014**

**Appeal**

**THE IMMIGRATION ACTS**

<b>Heard at Field House, London On 11 June 2014</b>	<b>Determination Sent On 12 June 2014</b>

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GRIMES**

**Between**

**BLERINA SAMURRI**

Appellant

**and**

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

Respondent

**Representation:**

For the appellant: Mr P Bonavera instructed by Kilby Jones Solicitors  
For the respondent: Mr D Mills, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, a national of Albania, appealed to the First-tier Tribunal against a decision by the respondent dated 7 January 2014 to remove her from the UK following the refusal of her application for asylum. Judge of the First-tier Tribunal MJH Wilson dismissed the appeal. The appellant now appeals with permission to this Tribunal.

2. The background to the appellant's claim for asylum is that in February 2008 she moved out of her family home to marry, her family were opposed to the marriage and she has not spoken to them since she moved out. She married in February 2009 and she and her husband

went to Greece to work and subsequently separated and divorced. She met an Albania man called Bashkim in Greece in June 2010 and they began a relationship. However she was 'sold' by Bashkim to another Albanian man called Emilio and his Greek wife and she was forced into prostitution. She made one failed attempt to escape and was threatened by Emilio. She managed to escape in September 2013. She had kept some money hidden and used this to pay the lorry driver who took her to the UK. The respondent accepted the appellant's account in full. The respondent considered the background evidence and the country guidance case of AM and BM (Trafficked women) Albania CG [2010] UKUT 80 and decided that the appellant is not at risk on return to Albania and considered that she could access the assistance of the Albanian authorities and the support available from NGOs there.

3. The Judge found that the appellant's claim that she feared the men who trafficked her was not credible and that her belief that the two men were involved in a criminal network or had powerful connections in Albania was speculative. The Judge found that there was no credible evidence that the two men maintained any interest in the appellant. He found that if the two men were involved in a criminal gang they had no influence beyond Greece or their own localities.

4. In the grounds of appeal to the Upper Tribunal the appellant challenges the Judge's findings on the basis that the Judge, in finding that the appellant's evidence was not enough to satisfy the standard of proof, seemed to require corroboration. It is contended that such a requirement is unlawful and asks what evidence the appellant could possibly have provided to satisfy the Judge.

5. In advance of the hearing the appellant's representative applied to amend the grounds of appeal. At the hearing Mr Mills indicated that he had no objection to the proposed amendment and I granted permission to amend the grounds.

6. The further ground of appeal contended that the Judge made a material error in his finding that there was a discrepancy between what the appellant said at 4.2 of her screening interview and what she said later in her asylum interview. The Judge considered that the appellant's credibility was damaged because in her screening interview she said that she feared Bashkim but made no mention of Emilio. However the grounds point out that the appellant did in fact mention Emilio at 4.1 and 4.2 of the screening interview, immediately before the section relied on by the Judge where she mentioned Bashkim.

#### Error of law

7. I have firstly considered the new ground of appeal. At paragraph 10 of the determination the Judge states that the appellant has given '*inconsistent and speculative accounts of her alleged fears*'. As an example he sets out the appellant's answer at 4.2 of the screening

interview where she said that Bashkim is well-known in Albania and that he knows police and that he has influence with police. The Judge said that he found this answer significant because the appellant made no mention of Emilio who she later claimed that she feared most and that the statement at her screening interview that she feared Bashkim was a 'reversal' of the appellant's later position. The Judge noted that Emilio first emerged as the main source of the appellant's alleged fear of returning to Albania at question 36 of her asylum interview when she said that she needed protection from Emilio and his wife and made no mention of Bashkim. The Judge concluded;

"I find that without in any way detracting from the respondent's concession that she was trafficked, this part of her claim represents a major inconsistency that undermines her claim to be in danger of being re-trafficked in Albania; specifically I find that it casts doubt upon her claim that she is in danger from either or both of these men in Albania."

8. At paragraph 21 the Judge again referred to the inconsistency in the screening interview and again highlighted that in the answer to question 4.2 the appellant made no mention of the person she later claimed she feared most, namely Emilio. The Judge said;

"At the screening interview stage the apparent protagonist in her fears was Bashkim, not Emilio, representing what I find was a *volte-face*. I note that Emilio first emerged as the main actor in her stated anxieties in her asylum interview in answer to question 36, where she named both him and his wife. I find this to be a significant inconsistency that casts doubt upon her claim to fear either or both of these men in Albania. Further to this I find that she couched her alleged fears in similar language to that she used elsewhere in her account, namely in vagueness and circumspection that distanced her from anything that was evidence based".

9. The record of the screening interview states at 4.1 that the appellant was asked why she came to the UK and she said; "*I came here for protection from a person who used me for prostitution in Greece*". She said that the person's name was Emilio and that his wife was working with him. At 4.2 when asked why she could not return to her own country she said; "*I am in danger from Emilio and a person who sold me to him*". When asked for the name of the person who sold her she gave Bashkim's name. She went on to say;

"They are from Albania and they know everything about me, where I lived. Bashkim is well known in Albania, he got me the passport and he knows police so what I understand he has influence with police"

10. The Judge quoted the above passage at paragraphs 10 and 21. However read in context it is clear that the passage refers to both Emilio and Bashkim ('they'). The Judge's conclusion that this represents a

'reversal', a 'major inconsistency' or a 'volte-face' in her evidence is based on a mistake as to what the appellant said in her screening interview.

11. Mr Mills submitted that this is not a material error as the other findings were open to the Judge. However I am satisfied that this is a material error. The Judge made significant adverse findings as to the credibility of the appellant's subjective fears. The Judge did not accept the appellant's account as to what she had been told by another woman being held by Emilio or the appellant's account of her own observations and beliefs as to Emilio and Bashkim's criminal connections. It is clear that the Judge's adverse credibility findings flowed from the mistake about the screening interview. The Judge dealt with it first, at paragraph 10 and referred to it again at paragraph 21 when reaching his final conclusions as to the appellant's credibility. In these circumstances the mistake went to the heart of the credibility findings and amounts to a material error of law.

12. I have also considered the original grounds of appeal. The appellant's evidence was that Emilio and Bashkim were part of a criminal gang with connections and influence in Albania. She based this opinion on what the men said, what she observed and on what another woman, who was also being held, told her. The Judge dismissed the appellant's evidence as speculation, conjecture and hearsay and that it was not based on 'fact or hard information' [11]. The Judge concluded that there was 'not a shred of credible evidence' that Emilio had connections with anyone of power and influence in Albania and that there was no credible evidence that the appellant was at risk from criminals connected to Emilio and Bashkim or that they had any influence with the authorities in Greece or Albania.

13. Mr Mills accepted that it was unusual that the Judge looked for credibility issues when the respondent had accepted the appellant's account in its entirety. He accepted that it did not appear that the presenting officer had raised credibility issues. However he submitted that the Judge did need to assess whether the appellant's subjective fear was made out and that the Judge had done so properly.

14. I am satisfied that the Judge did apply the wrong standard of proof in assessing the appellant's account of her subjective fear. The respondent had already accepted that the appellant was persecuted in the past. The appellant's own evidence, even if speculative or hearsay, does have weight and should be assessed in the light of the background evidence and the case law in deciding whether the appellant faces a real risk of persecution upon her return to Albania. The issue to be determined in this appeal is whether the appellant's subjective fear is well-founded and whether she is a risk of persecution upon her return to Albania.

15. For these reasons I am satisfied that the First-tier Tribunal Judge erred in his consideration of this appeal. The Judge made a material mistake of fact and applied the wrong standard of proof to the assessment of the appellant's evidence. I cannot therefore preserve any of the findings made.

16. I am satisfied that the appellant has not therefore had her case properly considered by the First-tier Tribunal. The parties were in agreement with my view that the nature and extent of the judicial fact finding which is necessary in order for the decision to be remade is such that (having regard to the overriding objective in Rule 2 of the Upper Tribunal Procedure Rules 2008) it is appropriate to remit the case to the First-tier Tribunal.

### Decision

The Judge made an error on a point of law and the determination of the First-tier Tribunal is set aside.

The appeal is remitted to the First-tier Tribunal to be remade.

Signed  
2014

Date: 11 June

A Grimes  
**Deputy Upper Tribunal Judge**

