



IAC-AH-LEM-V1

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

Appeal Number: AA/04895/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 5 November 2014**

**Decision and Reasons Promulgated
On 11 November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A M

(ANONYMITY DIRECTION MADE)

Respondent/Claimant

Representation:

For the Appellant: Mr T Melvin, Specialist Appeals Team

For the Respondent: Mr S Chelvan, Counsel instructed by Parker Rhodes Hickmotts
Solicitors

DECISION AND REASONS

1. The Secretary of State appeals to the Upper Tribunal from the decision of the First-tier Tribunal allowing the claimant's appeal against the decision by the Secretary of State to refuse to recognise her as a refugee. The First-tier Tribunal made an anonymity direction, and I find that it is appropriate to continue this direction for the purposes of these proceedings in the Upper Tribunal, given the nature of the issues.

2. The claimant is a national of Albania, whose date of birth is 18 July 1991. She claimed asylum at ASU Croydon on 9 December 2013. She said she had left Albania on 6 September 2013 by ferry in order to travel to Italy. As soon as she arrived there she got into a car and travelled to Belgium where she stayed until 2 December 2013. She was trafficked as a prostitute to Belgium. She left Belgium on 2 December 2013 by lorry and arrived in the UK on 4 December 2013 at an unknown place. She could not produce her own national passport because it was retained by the people in Italy after she got off the ferry.
3. She was asked to briefly explain why she could not return to her home country. She said if she went back to Albania, her brother would kill her. Also the traffickers if they found her would force her to do prostitution again. Her father had passed away and her mother and two sisters were ill. One of her sisters had mental problems, and the other sister had sight problems and her mother had a heart condition. Her brother used her as a servant. Her brother had become head of the family after her father's death. He abused her and beat her up. He told her that she had to obey him.
4. She met this guy called Kastriot with whom she fell in love and decided to flee Albania. Whilst on the ferry, she telephoned her brother. But he became very angry and told her that she had brought shame to the family, and she should not dare to come back to Albania.
5. Kastriot had told her that he lived in Belgium, and he would take care of her there. Upon arriving in Belgium, they went to a hotel in Gwent. He told her to change, get freshened up and he would come back with some food. About 30 minutes later an Albanian lady came to her room with some food. Another man came to her room and she asked him about Kastriot to which he replied "don't worry about him". She was slapped by him and fell down. Next morning she found herself naked in the room. The Albanian lady and the man who had hit her came to the room and said that she would be working for them as a prostitute. If she tried to escape, they would kill her. She stayed in the hotel for three months until another Albanian came and took her away. He said that she was going to the UK, and someone else would be waiting for her. She was with two other girls. They travelled in a lorry. When they arrived some guys were waiting in a car. They got into the car and one of the girls became sick halfway through the journey. They stopped the car to deal with her, and she took the opportunity to run away from them. She met some people and asked for help. She then met a Kosovan family who helped her.
6. The claimant was subsequently interviewed about her asylum claim on 13 January 2014.
7. On 23 June 2014 the Secretary of State gave her reasons for refusing to recognise the claimant as a refugee, or as otherwise requiring international protection. She summarised her claim as fearing mistreatment on return due to her membership of a particular social group, namely as a former victim of human trafficking for the purposes of sexual exploitation, and due to a fear of an honour killing by her brother. She said that a referral had been made on her behalf to the National Referral

Mechanism in order for a competent authority to make a decision as to whether she fell within the definition of a victim of trafficking as established by the Council of Europe Convention Against Trafficking in Human Beings. That part of her claim had been dealt with in a separate consideration.

8. Although the competent authority had made a decision by the date of the hearing in the First-tier Tribunal, and possibly by the date of the refusal letter, the decision of the competent authority was not in evidence before the First-tier Tribunal, and it was also not in evidence before me.
9. In the refusal letter the Secretary of State analysed the claim under six headings: family life in Albania; relationship with Kastriot; flight to Belgium, escape in the UK; paragraph 339L; and risk on return.
10. With regard to the first topic, the Secretary of State did not accept the claimant's account of her family life in Albania because it was inconsistent with representations made by her brother Ilir when he applied for a visa in 2006. Home Office records showed that her brother Ilir had entered the United Kingdom illegally in 1999 and was in the UK until he was removed from the country in 2004. He later returned to the UK in 2005 due to his relationship with a British national. Given that she stated she had lived with her family members up until 2013, it was considered inconsistent she was unaware her brother had come to the UK and had lived in the UK for several years, particularly as he spoke English. Also, given her brother's ties to persons in the UK, such as his wife/fiancée or his cousin who was resident in the UK in 2006, it was considered inconsistent that the appellant claimed to know no one here before coming to the UK.
11. On the second topic, her relationship with Kastriot, the Secretary of State found that her account was internally inconsistent, but it was not externally corroborated and remained unsubstantiated. Accordingly consideration would later be given as to whether to advance her the benefit of the doubt.
12. On the topic of events since leaving Albania and travelling to Belgium, the Secretary of State accepted that the claimant had been broadly internally consistent in this aspect of her account, but again it was not externally corroborated and remained unsubstantiated. Accordingly, consideration would later be given as to whether to advance her the benefit of the doubt.
13. On the topic of escape in the UK, the lack of safeguards to prevent her escape appeared inconsistent with her account, as did the traffickers' decision to pull up in a public area and to put themselves in a position where matters were not fully under their control, solely due to a girl being ill in the car. But irrespective of the above issues, the claimant had been broadly consistent in this aspect of her account. Consideration would be given later as to whether to advance her the benefit of the doubt.
14. On the topic of paragraph 339L, the Secretary of State said the claimant had provided a plausible explanation for her lack of documentation, stating that her passport had

been taken from her. However, for the reasons given previously, not all aspects of her account had been found to be coherent and plausible. Consideration had been given to her general credibility under Section 8. It was considered she had deliberately withheld information relating to her family members. As she had not met all five stages of the test set out in paragraph 339L, it was not compulsory to award her the benefit of the doubt. When looking at the likelihood of her claimed unsubstantiated events having occurred, it was noted that aspects of her account had been found to be incoherent and implausible and that there were concerns over her credibility. As such, the reliability of her verbal evidence was doubted. Given this, it was considered the benefit of the doubt could not be given to her because there were real concerns that she was not a person in genuine need of international protection.

The Hearing Before, and the Decision of, the First-tier Tribunal

15. The claimant's appeal came before Judge Andonian sitting in the First-tier Tribunal at Taylor House on 18 August 2014. The claimant was represented by Mr Chelvan of Counsel, and the Home Office was represented by Mr Panayi. In his subsequent determination, Judge Andonian set out at paragraphs 2 to 7 the claim as originally presented.
16. Although it is not immediately apparent from the determination itself, the judge went on to set out in paragraphs 8 to 11 the claimant's evidence by way of appeal. She was pregnant as a result of a one-night stand in the United Kingdom with a man whose identity was not known to her. She came from a place where honour was protected, and she faced even more risk now because she was pregnant outside marriage. She could not return to Albania with a child born out of wedlock with no name of the father or his details. All she knew was that the father spoke Albanian and English.
17. She did not know anything about her brother being in the UK or why he did not mention their sister Kozeta in his visa applications. All she knew was that he had left home when she was very young and returned after their father died. She was around 8 years old when her brother left home, and 13 when he returned to the family home.
18. She addressed the point raised by the Home Office in the refusal letter that she would not maintain a positive view of Kastriot, if it was true that he had trafficked her to the UK. She said she was asked during the substantial asylum interview what was his personality, and she was describing his personality from before he trafficked her. He was good with her whilst in Albania. He was a true gentleman whilst in Albania. That was what she was trying to say during the interview. She was not saying he was a good person now.
19. The judge's findings begin at paragraph 12. He said the claimant was not very intelligent, and that there was a real fear of her being re-trafficked were she to return as an attractive young 23-year-old single woman with no male support and with an illegitimate child. The judge observed that she was currently heavily pregnant. The judge continued:

She is attractive looking and has very limited education as well. She said she also feared honour killing at the hand of her brother and she would be ostracised from her extended family in Albania, and also from the community and honour killings are not taken seriously by the police as they are considered to be domestic family matters. She also said she could not internally relocate, as Albania is a small country and she will be found out. She is a young woman with a child out of wedlock. She said it was not safe for a woman to live in Albania without male support and with a child out of wedlock, she was also afraid of being found out sooner or later by her brother and be killed. It was also argued before me that the appellant's brother is not a man of any credibility as his claim before this Tribunal when he was in the UK long before the appellant looking to stay proved to be lacking in credibility, and it was argued that the respondent should not accordingly take any notice of what the brother said in his appeal many years ago about his family before this Tribunal in trying to pick faults in the appellant's credibility as her brother was a person of no credibility as found by the Tribunal at the time. It was clear from the determination of the Tribunal in the brother's appeal that he even lied about his nationality. He said he was from Serbia and Montenegro. He had lied about his family name, about his parents referring to his mother as an Egyptian gypsy, and about his father as an Ashkali gypsy from Kosovo who died in 1998; he also lied and said his mother had died in 1998 as well. A copy of the brother's determination in which he uses a false identity is also on the file and was with the respondent's bundle. The appellant said she was 23 years of age and was in fear of being re-trafficked as a young woman with no male support and with an illegitimate child and completely defenceless.

20. The judge went on to address the issue of risk on return. The Secretary of State had argued that the claimant could find shelter to go to, but this was not a practical solution for the claimant. There was nothing to show that the shelters for women and NGOs could offer effective assistance or protection to the claimant in Albania. Furthermore, the claimant could not relocate internally as a victim of trafficking. The judge found she was at risk of re-trafficking all over Albania from her traffickers. She was also at risk of honour killing from her brother in Albania, who appeared to be a man of no credibility whatsoever.
21. The judge observed at paragraph 17 that the US State Department Report stated Albania remained a source country for trafficking adults and minors. It made it clear that trafficked women can be at risk of re-trafficking on return to Albania. It was reasonable to conclude on the lower standard of proof that the claimant was at risk in that regard. The same report corroborated her concern in that much of Albania was governed by a strict code of honour which not only meant that trafficked women would have direct difficulty in reintegrating into their home area on return, but also their ability to relocate internally would be affected. It also made clear that those, like this claimant who had children out of wedlock, were particularly vulnerable.
22. At paragraph 19 he said he considered the case of **AM and BM (Albania) CG [2010] UKUT 80 (IAC)**. This made it clear that trafficked women in Albania might well be members of a particular social group on that fact alone. Whether they are at risk of persecution on account of such membership and whether they would be able to access a sufficiency of protection from the authorities depended upon individual circumstances, including but not limited to the following:

- (1) the social status and economic standing of the trafficked woman's family;
- (2) the level of education of the trafficked woman or her family;
- (3) the trafficked woman's state of health;
- (4) the presence of an illegitimate child;
- (5) the area of origin of the trafficked woman's family; and
- (6) the trafficked woman's age.

The judge found that her family had no social status in their society, that they were fairly poor and lived a meagre existence as a family. The appellant had a limited education. She was hugely depressed as a result of what had happened to her, and now was fearful of returning with an illegitimate child and no male support; and she was a young attractive woman from an area of Albania, namely Shkoze (Tirana) where honour was protected.

23. The judge summarised his conclusions at paragraph 20 as follows;

On the evidence before me which I have fully considered, I believe on the lower standard of proof ... that she has been trafficked from Albania, and on the same lower standard I consider that there is a risk to her being re-trafficked were she to be returned to Albania. I believe she is a member of a particular social group of women in Albania.

The Application for Permission to Appeal

24. A member of the Specialist Appeals Team settled an application for permission to appeal on behalf of the Secretary of State. The judge had failed to give reasons or any adequate reasons for findings on material matters (ground 1) and/or the judge had failed to take into account and/or resolve conflicts of fact on material matters (ground 2). The judge had failed to provide any reasons for accepting that the claimant was trafficked to the UK, which was not accepted by the SSHD. The judge simply made findings in respect of her ability to relocate or seek protection in the light of **AM and BM (trafficked women) Albania CG [2010] UKUT 80 (IAC)**. In doing so, the judge had not engaged with the main aspect of the claim. The claim to have been trafficked to the UK had not been accepted in the Reasons for Refusal Letter for "the several reasons" given in paragraphs 22 to 45 for rejecting her claim to have been a victim of trafficking. The judge had failed to address any of the issues raised in the Reasons for Refusal Letter, and the determination was thereby flawed.

The Grant of Permission to Appeal

25. On 25 September 2014 First-tier Tribunal Judge V A Osborne granted permission to appeal for the following reasons:

Within the determination the First-tier Tribunal Judge appears to have simply accepted the [claimant's] claim to have been trafficked without making clear findings based

upon the opposing views taken by the [SSHD] and the [claimant]. Accordingly the judge has failed to make findings on a material issue.

The Hearing in the Upper Tribunal

26. At the hearing before me, Mr Chelvan relied on a robust Rule 24 response that he had settled opposing the appeal. He drew my attention to **VHR (unmeritorious grounds) Jamaica [2014] UKUT 00367 (IAC)**, the head note of which reads as follows: “Appeals should not be mounted on the basis of a litany of forensic criticisms of particular findings of the First-tier Tribunal, whilst ignoring the basic legal test which the appellant has to meet.”

27. In that decision, which was reached by a panel consisting of Haddon-Cave J and Upper Tribunal Judge Hanson, the Tribunal at paragraph 24 said:

As McCombe LJ in **VW (Sri Lanka) [2013] EWCA Civ 522** said: ‘Regrettably, there is an increasing tendency in immigration cases, when a First-tier Tribunal Judge has given a judgment explaining why he has reached a particular decision, for seeking to burrow out industriously areas of evidence that have been less fully dealt with than others and then to use this as a basis for saying the judge’s decision is legally flawed because it didn’t deal with a particular matter more fully. In my judgment, with respect, that is no basis upon which to sustain a proper challenge to a judge’s finding of fact’.

28. Mr Chelvan submitted that the judge had given adequate reasons for finding the claimant credible on her core claim of being trafficked to the United Kingdom, and that in essence the error of law challenge mounted by the Secretary of State was no more than an expression of disagreement with findings that were reasonably open to the judge.

29. Mr Melvin submitted that the refusal letter was lengthy, and the judge failed to deal with numerous adverse credibility points. The issues raised were too complex to be dealt with satisfactorily by the judge in half a dozen paragraphs. The reasoning was inadequate.

Discussion

30. I do not consider that the error of law challenge mounted by the Secretary of State exhibits the mischief deprecated by the Upper Tribunal in **VHR**. On the contrary, the error of law challenge is at the opposite end of the spectrum. Far from subjecting the decision of the First-tier Tribunal to a litany of forensic criticisms, the error of law challenge is confined to one simple point, which is that the judge did not adequately engage with the reasons given in the refusal letter for rejecting the credibility of the trafficking claim.

31. I consider that the error of law challenge has prima facie merit in that the judge’s reasoning on this aspect of the claim is scant, repetitive and to some extent circular. The judge does not always draw a clear distinction between the claimant’s evidence and what he has found to be proved. He also does not draw a clear distinction between the question of whether there is a well-founded fear of the claimant being

re-trafficked and the anterior question of whether she had discharged the burden of proving that she was trafficked in the first place.

32. Accordingly, if the determination is considered in isolation, there is considerable force in the Secretary of State's argument that the determination does not discharge the vital function of explaining to the losing party why he/she has lost. However it is not right to look at the determination in isolation for two reasons. Firstly, the error of law challenge requires me to review the refusal letter so as to ascertain whether the judge has materially failed to engage with it. Secondly and in any event, the Secretary of State can reasonably be expected to bring to bear her knowledge of the contents of the refusal letter when seeking to understand why a First-tier Tribunal Judge has rejected her case.
33. As I have sought to highlight earlier in this decision, there was in essence only one major adverse credibility point advanced in the refusal letter. This was the divergence between the claimant's account of her family circumstances in Albania, and the account given by her brother. The rejection of the core claim of trafficking flows entirely from this one adverse credibility point. For although the Secretary of State separately identified what she described as two inconsistencies in the trafficking account, she placed very little weight on them. She placed so little weight on them that she characterised the claimant's account of trafficking as being *throughout* internally consistent or at least broadly internally consistent.
34. So, on analysis, the Secretary of State did not advance "several" reasons in the refusal letter for disbelieving the appellant's claim. In fact, the Secretary of State only advanced one major reason (giving information about her family members inconsistent with that given by her brother and thus deliberately withholding information relating to her family members) and two subsidiary and minor (in the Secretary of State's own estimation) reasons: namely the claimant's description of Kastriot as being a "good guy irrelevant of what happened from Belgium" (see paragraph 28 of the refusal letter) and the asserted implausibility of her alleged traffickers allowing her to escape once she had reached the UK (see paragraphs 37 and 38 of the refusal letter).
35. The judge's reason for finding in the claimant's favour on the main adverse credibility point is tolerably clear, which is that the Secretary of State could not reasonably rely on the brother's account of the family's circumstances as contradicting the claimant's account when the brother was a liar and a person of no credibility whatsoever; and a previous Tribunal had made findings to this effect.
36. The major adverse credibility point having thus been swept away, there was on the Secretary of State's own analysis nothing left to justify the rejection of the core claim of trafficking beyond, as previously canvassed, the two subsidiary credibility points were not regarded by the Secretary of State as being sufficient in themselves to undermine the credibility of the core claim.

37. In any event, the judge set out at paragraph 10 of his determination the claimant's explanation for what she had said about Kastriot in the course of her asylum interview. Although this is not spelt out, it is tolerably clear that the judge found the claimant's explanation to be persuasive and credible.
38. I accept that there is no reference in the determination to the other subsidiary credibility challenge, concerning the plausibility of her escape from her alleged traffickers once she had arrived in the UK. So to that extent the determination does not engage with a reason given in the refusal letter for disbelieving the trafficking account. But given the low status accorded to this adverse credibility point in the refusal letter, I do not consider that the failure by the judge to address this point discloses a material error of law.
39. In retrospect, it is apparent that at the date of the hearing in the First-tier Tribunal both parties knew the outcome of the referral to the competent authority on trafficking. But neither party sought to rely on the findings of the competent authority in support of their respective positions. If the competent authority rejected the trafficking claim, and if the judge had been provided with a copy of its reasons for doing so, this would have triggered an obligation on the part of the judge to engage with the reasons given by the competent authority as part of his decision making process. But, as it was, the Secretary of State apparently relied only on the very narrow and inherently weak basis for rejecting the trafficking claim which was canvassed in the refusal letter. For the error of law challenge does not include a claim that Mr Panayi advanced additional reasons for disbelieving the trafficking claim, based inter alia on the claimant's performance in cross-examination, which the judge failed to address. So judged holistically, the determination of Judge Andonian adequately explains why the claimant was successful in her appeal against the refusal of asylum.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

Signed

Date

Deputy Upper Tribunal Judge Monson

11 November 2014