



**The Upper Tribunal
(Immigration and Asylum Chamber) Appeal number: AA/06835/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On January 23, 2015**

**Determination Promulgated
On February 13, 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

**MISS DONIKA SEFERI
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondents

Representation:

For the Appellant: Mr Marjus, Counsel, instructed by Turpin & Miller Solicitors
For the Respondent: Mr Duffy (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant is a citizen of Albania. On February 28, 2012 she left Albania and travelled to Italy, Belgium and then Holland. She was arrested in Holland and sentenced to two months imprisonment for using an ID card that did not belong to her. On May 5, 2012 she was released from prison and she returned to Albania where she remained until October 12, 2013 when she left and made her way to the United Kingdom. She entered the United Kingdom clandestinely on October 14, 2013 and claimed asylum on November 26, 2013. She was served with Form IS151A as an illegal

entrant. The respondent refused her asylum application on August 28, 2014 under paragraph 336 HC 395 and she also took a decision to remove her by way of directions under paragraphs 8-10 of schedule 2 to the Immigration Act 1971.

2. The appellant appealed under section 82(1) of the Nationality, Immigration and Asylum Act 2002 on September 15, 2014. She claimed that if returned she would be at risk of being forced back into prostitution and being re-trafficked. She maintained that she would be at risk both in her home area and other parts of Albania. Alternatively, the appellant claimed she was entitled to humanitarian protection or protection under articles 2 and 3 of ECHR.
3. The matter came before Judge of the First-tier Tribunal Morris (hereinafter referred to as the "FtTJ") on October 30, 2014 and in a decision promulgated on November 13, 2014 she dismissed the appeal on all grounds.
4. The appellant lodged grounds of appeal on November 28, 2014 alleging:
 - a. The FtTJ failed to take into account the fact the respondent accepted at the hearing she was a prostitute in Albania and that such persons were at risk of being trafficked.
 - b. The FtTJ failed to apply the correct standard of proof when making key findings.
 - c. The FtTJ erred by failing to consider the risk she faced as a single mother including the risk of being trafficked.
 - d. The FtTJ erred by failing to allow the appellant to give evidence on her son's legitimacy.
 - e. The FtTJ erred by requiring corroboration.
 - f. The FtTJ made irrational findings and took into account immaterial facts.
 - g. The FtTJ failed to set out specific reasons for her findings.
5. On December 12, 2014 Judge of the First-tier Tribunal Cox gave permission to appeal finding grounds one and two had merit and he also stated the remaining grounds could be argued.
6. On December 19, 2014 the respondent filed a Rule 24 statement in which she submitted:

- a. The respondent did not accept his representative in the First-tier had conceded she was a prostitute as it was contrary to the refusal letter upon which reliance had been placed.
 - b. At paragraph [13] of his determination the FtTJ gave cogent reasons for rejecting the account and the determination demonstrated the correct burden of proof had been applied.
7. The appellant was present at the above hearing and was represented as set out above.

PRELIMINARY ISSUE

8. The appellant's solicitors had filed an application under Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 that included a statement and exhibit from the appellant's original counsel. This statement averred that the respondent's representative had conceded the appellant was a prostitute in oral submissions despite the content of the refusal letter.
9. Mr Duffy did not seek to challenge this concession and accepted the concession had been made at that hearing.
10. The FtTJ's notes confirmed this but went on to record that the respondent argued she was voluntarily engaged in being a prostitute and it was not accepted she had been detained or trafficked.
11. I therefore approached the appellant's appeal today on that basis.

SUBMISSIONS ON ERROR OF LAW

12. Mr Markus adopted the grounds of appeal and sought to persuade me there was an error for the following reasons:
- a. Ground One and Ground Six. The FtTJ failed to take into account the appellant was accepted as a prostitute or have regard to relevant objective evidence. He submitted the FtTJ failed to consider that people who worked as prostitutes are at risk. The FtTJ noted the respondent's concession at paragraph 16(ii) of the determination but she attached no weight to this concession. The FtTJ failed to consider why the appellant would leave Albania to come to the United Kingdom if she was voluntarily working as a prostitute and she also failed to resolve why the appellant left when Albania when she was heavily pregnant. The appellant's claim was she was being forced to have an abortion and if the FtTJ had considered this and accepted this claim then this may have affected her assessment of the claim. The FtTJ also failed to have regard to the fact the appellant and her family are from Northern Albanian family when considering whether she was voluntarily working as a prostitute.

- b. The FtTJ also failed to consider the risk to the appellant as a single mother. Paragraphs [59] and [60] of AM and BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC) discuss social issues in Albania and the FtTJ failed to demonstrate she had regard to these factors when making her findings.
- c. Ground Two The FtTJ applied the wrong burden and standard of proof. At paragraph [16(iii)] she stated “there is a real possibility that the true position is as set out in paragraph [14} whereas she should have stated there is “no real possibility that it is true”. At [16(iv)] she made the same error. At paragraph [18] she stated, “in all likelihood” and at paragraph [21] she stated, “there is a real likelihood that it is a fabrication” when she should have said the evidence was a fabrication. If there was only one slip then that may not amount to a slip but as the approach is continuous throughout the determination he submitted that the FtTJ has used the wrong test.
- d. Ground Three The FtTJ appeared to be wanting corroboration in paragraph [16(iv)] and in an asylum claim no corroboration is necessary as it is rare to have corroboration due to the difficulties in obtaining such evidence.
- e. Ground Four The FtTJ made findings based on irrational conclusions and immaterial factors. At paragraph [13(iii)] she failed to consider passage of time when Lulzim came to see her, the time she spent in prison and the fact she had an illegitimate child. A bigger point is what she earned and the fact she was not allowed to leave the house and would therefore have money unless that money was taken off her. The FtTJ should have considered her reason for not trying to escape instead of holding against her the fact she did not tell the nurse when she was having an abortion in hospital and the FtTJ overlooked the nurse’s attitude and that of society. The appellant was at a legitimate hospital but no evidence that traffickers would not use a legitimate hospital.
- f. Ground Five The FtTJ failed to give specific reasons for findings. The FtTJ failed to do this in paragraphs [13], [15], [17] and [24].
- g. Ground Seven Following the decision of RR (Challenging Evidence) Sri Lanka [2010] UKUT 00274 the FtTJ should have put to the appellant any issues she had concerns over. At paragraph [16(iv)] the FtTJ made a finding and did not put the matter to the appellant.
- h. Credibility findings have to be made in the round so where some fall away then that alters the whole perception of the case.
- i. The decision should be set aside.

13. Mr Duffy relied on the Rule 24 letter dated December 19, 2014. He responded as follows:
- a. Ground One The judge acknowledged she was a prostitute and therefore had this matter in her mind. She accepted this but disbelieved the rest of the claim. The real issue is whether the credibility findings are sustainable. If yes then CG decision is not relevant. If the FtTJ did not accept she was trafficked then look at paragraph [182] of AB and BM. The potential risk is them going after her and getting their money or punish her or make her work again. As the FtTJ found she was paid for services and left of own free will then AM and BM does not bite. Mr Duffy submitted the FtTJ had done enough and had given plenty of reasons at paragraph [13]. She gave examples of inconsistencies and found she was not confined and that she was paid for the work she did. The FtTJ was not saying she did not make an escape attempt but it was her explanation of how she escaped that the judge found lacked credibility.
 - b. Ground Two The errors on the standard/burden of proof were “slips” but they were not material. The FtTJ clearly demonstrated a clear grasp of the evidence and made findings that were open to her.
 - c. Ground Three The FtTJ did not require corroboration.
 - d. Ground Four The FtTJ accepted the arguments in the refusal letter but made her own findings at paragraphs [13] to [16].
 - e. Grounds Five-Seven fall away if earlier grounds have no merit.
 - f. The appeal should be dismissed.
14. I reserved my decision after hearing the submissions and agreed that if there were an error in law the matter would be remitted to the First-tier Tribunal as evidence would need to be heard afresh and fresh credibility findings made.

ERROR OF LAW ASSESSMENT

15. The FtTJ considered this claim and in a detailed determination refused the appellant’s application. Mr Markus has raised a number of challenges to the FtTJ’s approach and these are contained in both the written grounds of appeal and his oral representations as set out in both my record of proceedings and as summarised above.
16. Mr Markus relied on all of the grounds but in particular submitted that the FtTJ erred in her approach to the appellant being a prostitute and that she failed to apply the correct standard of proof.

17. The FtTJ set out the appellant's claim in paragraph [8] of her determination she referred both to the case of AM and BM and the US Department Report in paragraph [12]. At paragraph [13] the FtTJ had regard to the psychological and other damage inflicted on victims of trafficking but found the inconsistencies and contradictions undermined the reliability of her evidence.
18. Mr Markus first ground of appeal related to the FtTJ's approach to whether she was a prostitute but the FtTJ accepted she voluntarily worked as a prostitute but she was not trafficked.
19. In R and Others v SSHD [2005] EWCA Civ 982 Lord Justice Brooke summarised the points of law which would be encountered most frequently in practice as follows (i) making perverse or irrational findings on matters that were material to the outcome (ii) failure to give reasons or any adequate reasons for findings on material matters (iii) failing to take into account and/or resolve conflicts of fact or opinion on material matters (iv) giving weight to immaterial matters (v) making a material misdirection of law on any material matter (vi) committing or permitting a procedural or other irregularity capable of making a material difference to the outcome or fairness of the proceedings (vii) making a mistake as to a material fact which could be established by objective and un-contentious evidence when the appellant and/or his advisors were not responsible for the mistake and where unfairness resulted from the fact that a mistake was made. The Court said that errors of law of which it could be said that they would have made no difference to the outcome did not matter.
20. At paragraph [16] the FtTJ specifically found:

“... The appellant's claim to have worked as a prostitute has not been disputed. However I find there is no real likelihood that she was trafficked and forced into prostitution by Lulzim as claimed.”

The FtTJ then proceeded to explain her reasons for reaching that conclusion. I am satisfied those findings were open to her.

21. Mr Markus argued that the FtTJ had not dealt with the respondent's concession but I disagree. The FtTJ noted the concession in her findings but went on to find that the appellant was neither trafficked nor forced into prostitution. The FtTJ rejected the rest of her account and gave reasons.
22. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge. Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the

relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

23. As regards Ground One of the grounds of appeal I am satisfied that the FtTJ has demonstrated a good grasp of the central issues. She has meticulously considered all of the arguments advanced to her and the issues raised by Mr Markus do not amount to an error in law. The FtTJ was aware of the concession but rejected her claim she had been forced into prostitution. Mr Markus argued that being a prostitute in Albania placed this appellant at risk but as the Tribunal pointed out at paragraph [174] of AM and BM -

“... In Albania, there is the availability of work other than prostitution for single women. The victim of trafficking, on return to Tirana can access a shelter and is not left on the streets; there will be assistance in finding work and there is some State support. That is very different to the situation of a woman who returns to a country where there is no support from the State and prostitution is the only way in which she can prevent herself becoming destitute.”

24. I therefore conclude the FtTJ did not err in her assessment of the risk posed as a prostitute or fail to have regard to the fact it was accepted she was a prostitute.
25. Mr Markus also sought to persuade me that the FtTJ should have made findings on why she fled as pregnant woman to the United Kingdom. However, the FtTJ assessed the appellant’s claim and the findings she made led her to reject the appellant’s claim. The FtTJ is not required to make findings on each and every part of the claim advanced. The FtTJ rejected the core of her claim and whilst I accept the issue was raised before the FtTJ in submissions I am satisfied that her decision not to address the issue is not an error in law.
26. Both parties agreed that the second ground raised a possible error in law with Mr Markus submitting the FtTJ failed to properly direct herself as to the correct standard of proof.
27. The appellant’s grounds of appeal set out the areas where Mr Markus submitted the FtTJ erred. My attention was drawn to paragraphs [16(iii)], [16(iv)] and [21] of the determination. Mr Duffy argued that the use of the word “real possibility” was a slip and that this was not material to the FtTJ’s assessment of the evidence.
28. The burden of proof was on the appellant to prove her case to the standard of proof as set out in PS (Sri Lanka) v SSHD [2008] EWCA Civ 1213 where the Court of Appeal said that the single test of whether a fear of persecution or ill treatment was well founded was whether on the evidence there was a real risk of its occurrence or re-occurrence.

29. The FtTJ did not in this case apply the higher standard of proof as the words used reflect the lower standard of proof. The determination has to be taken as a whole and upon any reading of the determination the FtTJ has considered the evidence and rejected the claim. She considered the appellant's case and rejected it. The words used could have been phrased slightly better but I satisfied the FtTJ considered the appeal with the correct burden and standard of proof in mind.
30. Turning to the third ground of appeal Mr Markus has sought to persuade me that the FtTJ required corroboration. At paragraph [16(iv)] the FtTJ observed there was no other evidence to support her claim. However, the FtTJ had already given reason for rejecting the account. Often it is argued that material provided supports an appellant's claim and I am satisfied that the FtTJ merely stated that there was no other evidence that may have altered her view of the appellant's own evidence. The FtTJ did not err in her approach.
31. With regard to ground four Mr Markus submitted the FtTJ made adverse findings on immaterial matters. The FtTJ was earlier criticised for not making findings on why the appellant came to the United Kingdom as a pregnant woman. The FtTJ made findings on matters that she believed were relevant. In paragraphs [13] and [16] of her determination the FtTJ considered the issue of credibility and the findings she made were findings open to her based on the evidence before her. Whilst Mr Markus believed the matters were not material the FtTJ clearly believed they were sufficiently material to refer to them in her determination. In short, she rejected the submissions now being made by Mr Markus and that is of course something she was entitled to do.
32. Mr Markus argued that the FtTJ failed to give reasons for her findings. I have considered ground five of the grounds of appeal and Mr Markus's submissions. The FtTJ did not simply accept the refusal letter. She made findings on relevant parts of the claim and also in part agreed with the respondent's submissions in the refusal letter. This is not a case where no findings were made. The FtTJ made numerous findings between paragraphs [13] and [21] and she rejected the claim. I find no error in her approach.
33. Ground six of the grounds related to the risk posed to the appellant as a single mother. In MK (Lesbians) Albania CG [2009] UKAIT 00036 the Tribunal held that it cannot be said that without more there is a real risk that a woman without family support in Albania would suffer destitution amounting to inhuman or degrading treatment resulting in a breach of her rights under article 3 of the ECHR or persecution, but each case must be determined on its own facts. The FtTJ firmly rejected the appellant's claim she had been trafficked. Whilst single woman could be at risk the FtTJ rejected her account and found that she was not at risk of persecution and

at paragraph [17] the FtTJ considered general risk n return. There is no merit to this ground of appeal.

34. The final ground of appeal was one of unfairness. Counsel represented the appellant and at paragraph [16(iv)] the FtTJ found there was no evidence the child was born out of wedlock. This was a finding she made having heard what I was told was five hours of evidence and submissions. The FtTJ was not satisfied when considering the evidence and she is not required to request clarification from an appellant on every point where there is a disagreement.
35. Having considered all of the points made I am not persuaded there is an error in law.

Decision

36. The decision of the First-tier Tribunal did not disclose an error in law. I uphold the original decision.
37. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) an appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order was made in the First-tier and I see no reason to amend that decision.

Signed:

Dated: **February 13, 2015**

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

I revoke the earlier fee award as I have dismissed the appeal.

Signed:

Dated: **February 13, 2015**

Deputy Upper Tribunal Judge Alis