



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/06922/2014

THE IMMIGRATION ACTS

Heard at Field House, London  
On the 21<sup>st</sup> October 2015

Decision & Reasons Promulgated  
On 3<sup>rd</sup> November 2015

Before:

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between:

AC  
(Anonymity Direction made)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms King (Counsel)

For the Respondent: Mr Staunton (Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge Hembrough which was promulgated on the 25<sup>th</sup> March 2015, in which he dismissed the Appellant's appeal against the Respondent's refusal of her asylum claim.

Background

2. The Appellant is a citizen of Albania who was born on the 30<sup>th</sup> June 1992. It is the Appellant's claim that she was forced by her father to marry an older man Mr C, but between the engagement and marriage the Appellant had an affair with an Albanian man Mr K, who worked in Germany and who was in Albania on holiday. After Mr K returned to Germany the Appellant found out that she was pregnant by him. Her husband on finding out on their wedding night that she was not a virgin returned the Appellant to her family, and she says that she was beaten by her father. It is her case that eventually her husband was persuaded to take her back, but that her husband forced her into prostitution and tried to force her to have a termination when he found out about the pregnancy, despite the fact that she was more than 26 weeks pregnant and that he also assaulted her in the hope that she would miscarry.
3. The Appellant claimed asylum on the grounds that she had a well-founded fear of persecution and or would suffer serious harm by reason of her membership of a particular social group as a result of having been trafficked for the purposes of prostitution by her husband and having been subject to domestic violence at the hands of her father. On the 29<sup>th</sup> August 2014 the Respondent refused the Appellant's claim for asylum and on the 4<sup>th</sup> September 2014 gave directions for her removal under Section 10 of the Immigration and Asylum Act 1999. That decision was appealed to the First-tier Tribunal and that appeal was heard by First-tier Tribunal Judge Hembrough at Hatton cross on the 9<sup>th</sup> March 2015.
4. In his decision, Judge Hembrough rejected the Appellant's account of having been forced to married Mr C or that she had been internally trafficked and forced into prostitution at the hands of her husband, but accepted that she had been the victim of domestic violence at the hands of her father and that she would be returned to Albania as a single mother with an illegitimate child, without a male protector or the support of her immediate family. However, Judge Hembrough found that the Appellant would be able to integrate back into life in Albania and obtain employment, so as to provide for herself and the child, with the aid of assistance in Tirana, the benefit of a package offered by the International Organisation for Migration, and that she would be able to access support from her aunt who sent her to the UK. He therefore dismissed the appeal on Asylum, Humanitarian Protection and Human Rights grounds. The Appellant has appealed that decision to the Upper Tribunal.
5. Permission to appeal has been granted by Upper Tribunal Judge Storey on the 1<sup>st</sup> July 2015, for the following reasons:

"Whilst I do not consider that the grounds establish any arguable error in the Judge's treatment of the medical report-the Judge appears to me to make valid criticisms of Professor Katona's report-I am troubled by the following. The Judge believed the Appellant's account that the Appellant was a victim of domestic violence, but disbelieved her claim that she was a

victim of trafficking. The main basis on which the Judge explains the different assessments of credibility turns on the fact that the trafficking account was not mentioned in the screening interview. Yet (despite rejecting the body of Professor Katona's findings) the Judge found the Appellant had been the victim of trauma. The only reason given for rejecting the submission that the Appellant had failed to identify the account of being a victim of trafficking because of trauma was that in her screening interview she was coherent and consistent. However, I do not see that previous consistency precludes a failure to divulge key elements of an asylum claim at a first interview, especially when the screening interview (as here) is quite cursory. Further, some of the reasons given by the Judge for finding the Appellant not credible about her trafficking account were just as relevant, on the face of it, to whether she was credible on the domestic violence account. The findings on internal relocation appear confused, since they appear to depend in part on the Appellant being able to benefit from a return package for victims of trafficking, whereas the Judge rejecting that she was such a victim".

### Submissions

6. In her submissions on behalf of the Appellant Ms King relied upon her Grounds of Appeal. Although Upper Tribunal Judge Storey when granting permission to appeal had indicated specifically that he did not consider that the grounds established any arguable error in the Judge's treatment of the medical report and the Judge had made valid criticisms of Professor Katona's report, Ms King still sought to argue that the Judge had simply substituted his own opinion for that of the expert and sought to rely upon the case of Y and Another (Sri Lanka) v Secretary of State for the Home Department [2009] EWCA Civ 362, and the Judgement of LJ Sedley at [12] to argue that where the factual basis of psychiatric findings is sought to be undermined by suggesting the Appellant had exaggerated her symptoms, care was required and that whereas the factual account of an Appellant's history may be so controverted by the Tribunal's own findings as to undermine the psychiatric evidence, in that case, the Designated Immigration Judge himself formed the view that the Appellants' account had been calculatedly exaggerated in respect of the symptoms that they had recounted to the expert witnesses. Ms King argued that Lord Justice Elliott held that in the first instance this was a matter for the expert himself and that a fundamental aspect of his expertise is the evaluation of patient's account of their symptoms, and that it was only if the Tribunal had a good and objective reason for discounting that evidence that it could be modified or-even more radically-disregarded.
7. Ms King further sought to argue that Professor Katona in his report at [52] had detailed the difficulties that people have in recounting a traumatic experience, including maybe getting agitated and distressed whilst doing so and that the Appellant's failure to mention things in the short screening interview and difficulty talking about having been trafficked, was not sufficient reason for her to have been

disbelieved. She argued that the First-tier Tribunal Judge had given no reasons for rejecting the trafficking account other than the fact it is not mentioned in the screening interview. She argued that there was inadequate reasoning regarding the rejection of the Appellant's account of her husband having trafficked her into prostitution.

8. Ms King further argued that the Judge had wrongly considered the support packages available for the victims of trafficking, despite having found the Appellant was not a victim of trafficking, in respect of the issue as to whether or not the Appellant could safely internally relocate within Albania. She further argued that the Judge had made inadequate findings regarding the support available for victims of domestic violence at [55]. It was also argued on behalf of the Appellant that there were inconsistent and inadequate reasons put forward as to why the Appellant's aunt would be able to support her upon return, given that her aunt on the Appellant's case had sent her away when she was pregnant. Ms King asked if there was a material error of law, the case be remitted back to the First-tier Tribunal, as the Appellant's circumstances had now changed and she had met up again with her child's father and was in a relationship with him and that they were expecting a further child.
9. Mr Staunton on behalf of the Respondent sought to argue that the Judge's findings in respect of Professor Katona's report were open to him, given that the Judge considered that Professor Katona had not fully and properly considered the GP records. He sought to rely upon the case of JL (medical reports-credibility) China [2013] UKUT 145 (IAC) as authority for the point that the more a diagnosis was dependent upon the Appellant's own account, less weight should be attached to it. He argued that the Judge's findings in respect of the screening interview were open to him. He argued that the Appellant had ample opportunity to refer to having been trafficked within the screening interview and had said that she was not married within the screening interview and had stated that she had understood the interpreter.
10. Mr Staunton sought to argue that the packages available to the Appellant as a victim of domestic violence were similar to those available to people who have been trafficked and that therefore any error in the Judge's assessment of the packages available upon return was not material. He sought to produce evidence from the Horizon website, in respect of the packages available to victims of domestic violence, but accepted that this evidence was not before the First-tier Tribunal Judge and could not provide an explanation as to why such evidence had not been produced before the Judge.
11. He further sought to argue that it was open to the Judge to find that the Appellant could obtain help from her aunt if she were to be returned.

12. Mr Staunton further agreed with Ms King that if there was a material error of law, that the matter should be remitted back to the First-tier Tribunal for rehearing, given the changed circumstances in respect of the Appellant's relationship with her child's father and the fact that she now had a second child on the way.
13. Although Mr Staunton sought to produce further evidence today at the Upper Tribunal appeal hearing from the Horizon website regarding support available to victims of domestic violence, in an attempt to argue that any error on part of the First-tier Tribunal Judge in this regard was not material, in breach of Rule 15 (2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Respondent had failed to send or deliver a notice to the Upper Tribunal and to the Appellant indicating the nature of the evidence that it wished to produce and explaining why it had not been submitted to the First-tier Tribunal. No explanation was forthcoming when I asked Mr Staunton in respect of the same as to why such evidence had not been submitted to the First-tier Tribunal, if reliance were sought to be placed upon it as evidence as to the available packages for victims of domestic violence, as at the date of the original hearing, and that without any such explanation, I have not admitted the evidence and I have not taken account of the same when reaching my decision, as this was not evidence available before First-tier Tribunal Judge Hembrough.

#### My Findings on Error of Law and Materiality

14. I do not accept, given Upper Tribunal Judge Storey's wording of his permission to appeal grant, in which he stated specifically "whilst I do not consider the grounds establish any arguable error in the Judge's treatment of the medical report-the Judge appears to have made valid criticisms of Professor Katona's report", that permission to appeal was granted in respect of that ground of appeal relating to the Judge's handling of the medical evidence. Permission not having been granted in respect of that ground of appeal, I do not consider that it is something which is available to the Appellant to argue before me. I therefore do not accept the submissions of Ms King that the First-tier Tribunal Judge erred in his approach to the medical evidence, given that this is not available ground of appeal open to her, permission not having been granted in respect of the same.
15. However, even if I am wrong in that regard, that ground of appeal has no merit, in that the Judge has not simply considered that the Appellant exaggerated her account as being the reason for disregarding Professor Katona's report, but gave clear, sufficient and adequate reasons for rejecting the conclusions of Professor Katona's report between [45] and [48], including the fact that her account had not been verified by open questioning by Professor Katona and that he had not considered her GP notes in any detail, in particular, he had not considered the record of the GP consultation on the 1<sup>st</sup> August 2012 following the birth of her son when she said that she was

"coping well, no evidence of low mood", despite this being 4 months after her arrival into the UK and 6 weeks after the asylum interview. He therefore gave a perfectly adequate and sufficient reasons for rejecting the report of Professor Katona.

16. However, in respect of the basis upon which Upper Tribunal Judge Storey granted permission to appeal, namely that he was concerned that despite having believed the Appellant's account that she was a victim of domestic violence, but having disbelieved her account of being a victim of trafficking, that this was simply on the basis of the failure of the Appellant to mention the same in the screening interview.
17. I find that the First-tier Tribunal Judge did err in law at [44] in rejecting the submission of Ms King that the discrepancies in the Appellant's account between her screening interview and her substantive interview could be explained by reference to the fact that people with PTSD have difficulty in dealing with direct interviewing, and remembering traumatic events in temporal sequence and that those who have experienced sexual trauma have difficulty recounting events, simply on the basis that he was unpersuaded by that submission given the coherence and consistency of her account in the screening interview. Although the First-Tier Tribunal Judge properly gave reasons for discounting the final conclusions drawn by Professor Katona in respect of his failure to ask open questions and to fully consider the GP records, Professor Katona's opinion regarding the fact that victims of PTSD do have difficulty in dealing with direct interviewing, remembering dramatic events in temporal sequence and recounting sexual trauma, was based upon his expertise, and it is well established that victims of sexual trauma may well have difficulty in recounting the same. The Judge has failed to fully explain his reasoning or to give adequate reasons for rejecting this as a reason for the Appellant having failed to mention having been trafficked in her screening interview, in circumstances where he did then accept at [49] that the Appellant had been subject to some traumatic event which caused her to leave her family and eventually find her way to the UK whilst heavily pregnant. Simply stating that she had been coherent and internally consistent with the screening interview was an insufficient reason and has been inadequately reasoned.
18. Further, the Judge erred in law when considering the issue of internal relocation, as when dealing with the issue of the support services available to victims of domestic violence at [55] of his decision, the Judge simply stated that "the Appellant was not able to give any satisfactory reason as to why she would not be able to avail herself of the services on offer" which he described as being referred to within the Immigration and Refugee Board of Canada Report dated the 29<sup>th</sup> April 2014 at Section 4. However, given that report itself at paragraph 4.1 had stated specifically that "several sources indicate that there is not a sufficient number of shelters for victims of domestic violence"

and that "according to Data Centrum, the current shelters have a limited capacity, and there is a particular lack of emergency and long-term shelters in the North," and went on at paragraph 4.1.1 to state that "sources indicated that victims of domestic violence are required to have a protection order to stay at the National shelter", the First-tier Tribunal Judge simply placing the burden on the Appellant to explain why she would be unable to avail herself of the services on offer, rather than assessing fully what assistance might be available to victims of domestic violence, amounted to an error of law. His reasoning in that regard failed to explain why the Appellant would be entitled to access such services, rather than simply as he did, wrongly placing the burden on her to explain why she would not be able to avail herself of the limited services on offer. He failed to properly consider whether or not in fact she would be able to access such services, given their limited nature.

19. Further, the Judge erred in law at [60] and [61] in considering the shelters and packages, including the dedicated assistance package from the International Organisation for Migration, which had been established for victims of trafficking, when considering whether or not the Appellant could internally relocate, despite having found that she was not a victim of trafficking. The package offered by the International Organisation for Migration to which he referred at [60] was stated specifically to have been established as a dedicated assistance package for victims of trafficking who were voluntarily returning from the UK to Albania, including those with children, rather than being a package available to victims of domestic violence. To have taken this package as having been available to the appellant when there is no evidence that it given his findings regarding her not having been trafficked amounted to an error.
20. Further, the First-tier Tribunal Judge's finding at [55] that "It is, in my view, also reasonable to anticipate that upon return the Appellant would be able to access support from her aunt who sent her to the UK", in my judgement is inadequately and insufficiently reasoned. Given that the Appellant's own case was that her aunt had sent her away when heavily pregnant because she could not cope with the Appellant having a baby on the way, no explanation has been given by the Judge as to why in such circumstances, the aunt would be in a position to provide support, were the Appellant to be returned.
21. In my judgment the Judge's error in respect of his assessment of the appellant's credibility based upon the failure to mention trafficking within the screening interview, together with his failure to properly assess what support is available to victims of domestic violence, and his inclusion within his analysis of support actually available for victims of trafficking, despite finding that the Appellant was not a victim of trafficking and his failure to properly explain the basis on which assistance would be available from the Appellant's aunt if returned, do amount to material errors of law. In such circumstances,

the decision of First-tier Tribunal Judge Hembrough is set aside.

22. Given that the errors made by First-tier Tribunal Judge Hembrough in my judgement undermine the entire basis for his conclusions that the Appellant would not be at a real risk upon return and given the agreement between the parties that it was appropriate for the case to be remitted back to the First-tier Tribunal, given the change in the Appellant's circumstances, I do remit the case back to the First-tier Tribunal for rehearing. The rehearing is to take place before any First-tier Tribunal Judge other than First-tier Tribunal Judge Hembrough.

### Notice of Decision

The decision of First-tier Tribunal Judge Hembrough disclosing material errors of law, the decision is set aside;

The matter is remitted back to the First-tier Tribunal to be reheard before any First-tier Tribunal Judge, other than First-tier Tribunal Judge Hembrough;

The First-tier Tribunal having made a direction regarding anonymity pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2013, given the nature of the allegations raised in the case, it is appropriate for a further anonymity order to be made.

Unless and until a Tribunal or Court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Dated 23<sup>rd</sup> October 2015

*RFM<sup>c</sup>Ginty*

Deputy Upper Tribunal Judge McGinty