



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

Appeal Number: AA/09644/2014

THE IMMIGRATION ACTS

**Heard at North Shields
On 10 June 2015
Prepared on 10 June 2015**

**Determination Promulgated
On 15 June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

**A. Z.
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Caswell, Counsel instructed by Miles Hutchinson & Lithgow Solicitors

For the Respondent: Mr Mangion, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant says that she is a citizen of Albania. She claimed to have entered the United Kingdom illegally with her infant child on 6 May 2013, in the company of her husband, although she only applied for asylum after both she and her husband were arrested for the use of false Bulgarian identity documents when trying to open a bank account in the UK. The Appellant accepted upon arrest that she had herself used false Bulgarian identity documents to seek work and

benefits in the UK, using the false identity of Antonia Vosileva Georgeve to do so.

2. The Respondent refused the asylum claim on 4 November 2014 and in consequence she made a decision of the same date to remove the Appellant (with her child) from the UK as one who had entered illegally.
3. An appeal against that removal decision was heard and dismissed by First Tier Tribunal Judge Scobbie in a Decision promulgated on 2 January 2015. The Judge was not satisfied that the Appellant had given a truthful account of her experiences.
4. The Appellant applied to the First Tier Tribunal for permission to appeal, but permission was refused by Judge Cox on 19 January 2015. The application was renewed to the Upper Tribunal, and permission was then granted by Upper Tribunal Judge Eshun on 23 April 2015.
5. The Respondent filed a Rule 24 Notice on 13 May 2015. She argued that the grounds were misconceived.
6. Thus the matter comes before me.

The standard of proof

7. The first ground asserts that the Judge failed to identify in his decision the standard of proof that he applied to the evidence before him when making findings upon the disputed issues of fact.
8. It is not in dispute before me that there is nothing in the text of the decision itself that would found any suggestion that the Judge applied the wrong standard of proof when weighing the evidence. Mr Caswell's argument is simply that the Judge failed to specifically identify what standard of proof he employed was itself an error of law sufficient to require the decision to be set aside and the appeal reheard. He argued that a failure to do so would lead to an erosion of confidence in the First Tier Tribunal.
9. In my judgement this argument overlooks paragraph 8 of the decision in which the Judge identified that the burden lay upon the Appellant to establish that her return to Albania would expose her to a real risk of harm. Whilst a more explicit reference to the standard of proof is commonplace, and indeed desirable, it does not follow that the Tribunal's decisions are fatally flawed for use of the sort of terminology deployed by the Judge. The danger of the submissions made is that they would lead to the elevation of form over substance. Just as the failure to refer expressly to a statutory duty does not of itself show that they duty has not been performed, so too must be the absence of specific full reference to the standard of proof adopted; Baker v SCLG [2008] EWCA Civ 141. In my judgement there is nothing in the text of this decision, when it is read fairly as a whole, to

suggest that the Judge used anything other than the applicable low standard of proof when considering the account upon which the asylum and Article 3 claims were based. He gave entirely adequate reasons for his conclusion that the Appellant's account was incredible.

Country guidance

10. The second ground is the complaint that the Judge failed to make specific reference within his own decision to any country guidance decision of the Upper Tribunal, specifically AM & BM (Trafficked women) Albania CG [2010] UKUT 80.
11. Whilst it is common ground before me that the Judge did not make any specific reference to this decision, it is not accepted by the Respondent that there was no implicit reference to it. Thus there is a passage in the decision in which the reasons given by the Respondent in her letter of 31 October 2014 for refusing the asylum claim are set out [21-32]. That letter itself made express reference to both DM (Albania) CG [2004] UKIAT 59 and to AM & BM. The Judge then went on in the course of his decision to make specific reference to the background evidence placed before him by the parties [33 & 41].
12. Moreover in the circumstances of this case it is argued by the Respondent that there was in fact no need for the Judge to make any specific reference to AM & BM. The central issue for the Judge to resolve was the credibility of the Appellant's own account which patently suffered from a number of serious credibility problems that no reference to the decision in AM & BM would assist with. Those were rehearsed in both the letter giving the Respondent's reasons for refusing the asylum claim, and in the letter of the Competent Authority in which her claim to have been forced into prostitution and trafficked from Albania were also rejected, and again in the decision.
13. The Judge's key adverse findings of fact are adequately reasoned, and they were plainly open to him to make on the evidence that was before him [39-44]. The Judge rejected the Appellant's claim to have ever been a prostitute, or to have ever been trafficked. In those circumstances there was no reason to suppose that the Appellant's claim of having been abandoned by her husband was true, because her claim to have been abandoned by him was dependent upon the truth of those claims. It followed that the Judge did not need to consider the Appellant's return to Albania with her child from the perspective of her ability to cope upon return as a woman who was without family support, and/or as one likely to be perceived by society within Albania as one who was divorced or abandoned by her husband. The Appellant could return to her home area, and to both her own family, and to that of her husband, and she could be reunited there in due course with her husband.

Conclusions

14. In my judgement it is plain, when the decision is read as a whole, that the Judge considered all of the evidence, and gave adequate reasons for his decision. Notwithstanding the terms in which permission to appeal was granted, there is no merit in the grounds advanced before me. Accordingly there is no error disclosed in the Judge's approach to the evidence, and his decision reveals no material error of law that requires it to be set aside and remade.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 2 January 2015 contained no error of law in the dismissal of the Appellant's appeal which requires that decision to be set aside and remade, and it is accordingly confirmed.

Signed
Deputy Upper Tribunal Judge JM Holmes
Dated 10 June 2015

Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify her. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed
Deputy Upper Tribunal Judge JM Holmes
Dated 10 June 2015