



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/05882/2015

THE IMMIGRATION ACTS

Heard at Field House
On 16th March 2016

Decision & Reasons Promulgated
On 16th May 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

D N
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Akther, Counsel

For the Respondent: Mr S Staunton, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by D N a citizen of Albania born 18th February 1984. She appeals against the decision of the Respondent made on 20th March 2015 to refuse to grant asylum and to remove her from the United Kingdom by way of directions under paragraphs 8 to 10 of Schedule 2 to the Immigration Act 1971. The Appellant appealed against that decision and her appeal was allowed by First-tier Tribunal Judge Iqbal in August 2015. The Secretary of State appealed against the decision of First-tier Tribunal Judge Iqbal and on 10th December 2015 having heard submissions,

I found that there was a material error of law in that decision and I set it aside with no preserved findings of fact. My reason for doing this was that as was submitted by the Respondent in the grounds seeking permission to appeal, First-tier Tribunal Judge Iqbal had allowed the appeal on the basis that the Appellant was a single woman with three young children who would be returning alone to Albania. At the date of the hearing before First-tier Tribunal Judge Iqbal the clear evidence was that the Appellant was in a relationship with her partner, father of her three children, a citizen of Kosovo. There was no statement from her partner and he did not give evidence at the hearing. There was no information or evidence as to whether or not her partner would be able to live in Albania with her. There was no evidence of his nationality. There was no evidence of his status in the UK. There was no information about his relationship with his children or about how he would feel if the Appellant had to return to Albania. There was no information from him as to whether he would go with her and if not why not. The Appellant simply said he could not go as he is Kosovan although she did concede he can speak Albanian. First-tier Tribunal Judge Iqbal failed to consider the reasonableness of the Appellant's partner accompanying her to Albania and living with her there and although I accept that it is arguable that that is irrelevant as it is the Appellant who would be removed and it is only her situation I am concerned with, I did form the impression that a decision had been made, on the advice of legal representatives or otherwise, to leave the Appellant's partner entirely out of the matter which meant that a full picture of the Appellant's circumstances was not being given.

2. Since the Appellant claims to have been a victim of trafficking and as such may be particularly vulnerable an Anonymity Direction has been made.
3. The Appellant arrived in the UK on 15th October 2012 having left Albania in August that year. On 8th November 2013 she was referred to the National Referral Mechanism (NRM) as a potential victim of trafficking and on 13th June 2014 the Respondent made a decision that she was not a victim of trafficking. On 20th March 2015 a decision was made to refuse to grant asylum and to remove her from the United Kingdom.
4. In summary the Appellant states that she was born and lived in a village in the north of Albania. She went to visit her brother in Italy in 2011 where she met an Albanian man who I shall refer to as LD. He offered to marry her. Her brother overheard her speaking to LD and so arranged for her to return to Albania to marry someone there. When she got back to Albania she continued to be in contact with L D and eventually ran away, arriving back in Italy on 17th August 2011. She was met by LD at the airport. He took her to a room on the second floor of a three-storey building where there were two men who she was forced to have sex with. LD threatened to kill her if she did not do as he said. She was kept in a house where she worked as a prostitute. She had to have sex with nine or ten men a day. LD took the money she was given although she did sometimes get tips. Sometimes other men watched. She then was able to persuade one of her clients to help her escape. I shall refer to him as K. On 14th October 2011 K planned her escape with a friend who was to drive her away from the house she was working in. She jumped out of the window. She came to the UK by lorry. She met a man talking in the Albanian language. She told him

she had left her husband and fallen out with her family. She did not tell him what had happened to her. They stayed together and have three children now. She claims to have had no contact with her family since she left Albania.

The Decision of the Secretary of State

5. The Secretary of State does not accept that the Appellant was trafficked in Italy by LD. She found that she had been inconsistent with regard to her physical escape from her traffickers and how she kept possession of her passport to enable her to travel. The Secretary of State did not accept that she was able to leave the house by jumping out of the window since she had said that she was always watched by LD and the other men in the house. The Secretary of State went on to say that although she did not accept that the Appellant had been trafficked, even if she had so found there would be a sufficiency of protection for her in Albania. In any event LD lives in Italy not in Albania.

Evidence at the hearing

6. The Appellant provided a statement in response to the refusal letter. She states that it may be that she could not describe things very well hence the discrepancies in her evidence. She believes that the interpreter made a lot of mistakes during the interview. The interpreter at her screening interview was an Albanian-speaking person from Kosovo who had a Kosovan accent. She has her own accent as she came from a remote area of Albania. There was some confusion. Her first child was born on 27th August 2012. She was not pregnant when she arrived here. Her partner AM is the father of her children. She did not state that she stayed in Italy for twelve months. She was there for two months. (This is in response to claims of discrepancies in the dates that she allegedly gave). She says that she could not concentrate at the interview because her daughters were with her and they were crying all the time. She did her best but may have made some mistakes. She managed to escape from the house in Italy because it was the client she was with who helped her escape. She was not watched when she was with clients. With regard to her passport she said she would not have submitted her passport to the Home Office at all if she had had something to hide. The Respondent did not know she had it. She used it to travel from Italy to the UK. She took it with her when she ran away because it was there. She did not use it on her journey. She maintains that she would be a victim of honour killing because of the shame she has brought on her family. With regard to her current partner, he offered her support and they fell in love. She believes that there is a link between the gang operating in Italy and the gangs in Albania who traffic women. There are killings in Albania every day. There is a great deal of organised crime. Women are seen as second class citizens. She does not believe that she would get any protection. She would not be able to relocate because Albania is a small country and LD, his gang or her father would be able to find her wherever she went. In any event her children have to go to school and this would not be possible.
7. Her children were born on 27th August 2012, 16th August 2013 and 18th June 2015.
8. The Appellant gave oral evidence adopting her statement.

9. I asked her if she had any information or statement from her partner and she said she did not. She had indeed provided a supplementary statement dated 14th March 2016 in which she states that the relationship they had was casual. They were not in a long-term or committed relationship. He would come and go as and when he liked and would see her when he liked. Although she relied on him for emotional support he never reciprocated the feelings in return and he never intended that they would live together permanently. They had drifted apart over the last six months and gone their separate ways. He moved out and she no longer lives with him and the children. The primary cause of the separation was financial strain. He had lost his job and was struggling to support the children. She goes on to say that he does remain in the children's lives but does not want to be with her in a long-term relationship. In oral evidence she said she had phoned him and asked him why he was not coming home. He told her that he had been laid off work and did not want to live with her. He has given her only £100 for the children. He is in dire circumstances. He sees the children once or twice a week. She was asked if she had asked him to make a statement for the hearing and she said that she had but he gave her no explanation. He no longer lives with her and they have not talked since then.
10. Mr Staunton in cross-examination asked her where her ex-partner is now and she said she does not know. She has no information. I asked if he has a mobile phone and she said that he does but he changed the number. She confirmed to me that she does not have a number to contact him if there is a problem with the children. She had last seen him last week. She said he picks up her two older daughters and goes out for about an hour with them and then brings them back. He does not speak to her at all. He wants nothing to do with her. She has no other family in the UK. Mr Staunton asked her if she has discussed with her ex-partner the possibility of her being removed to Albania and her response was that he had said that he does not care what happens to her, he just wants to see his children. Mr Staunton asked her how he would see the children if she had to go to Albania and her response was that they had not discussed it. I asked her if she had discussed it prior to the last hearing when they were still together and she said they had not. Mr Staunton tried to get her to respond to the question of what had been discussed with her solicitor and what her understanding was of the possibility of returning to Albania and whether or not she had discussed this with her ex-partner. She was quite simply not answering the questions. I explained to her that what Mr Staunton was trying to say was that they have three children together and there is a possibility that the court would say that she has to go back to Albania. She said the discussions they have had is that he is Kosovan and he would not go to Albania. She said that currently he has no clue what is happening. She said that initially he told her he had two years' leave in the UK but she has never asked him about it since, this in response to a question of whether he has a visa to be in the UK. She was clear that her partner is not aware of her circumstances.
11. In his submissions Mr Staunton said he would rely on the refusal letter. The issue is what the Appellant's relationship is with her ex-partner and whether she is credible. He questioned her assertion that she does not have his mobile phone number.

12. Ms Akther in her submissions said that the couple were together at the time of the interview. The relationship is now over. She referred me to paragraphs 15 onwards of the new Country Guidance case **TD and AD (Trafficked women) CG [2016] UKUT 92 (IAC)** and in particular the references to the mores in Albania regarding unmarried women. She would be at risk of being re-trafficked. She referred me to her skeleton argument in which she states that the Appellant is from a strict family background from a remote area of Albania in which family honour is upheld.

Burden and Standard of Proof

13. The burden is on the Appellant to show with regard to the asylum appeal that returning him would expose him to a real risk of an act of persecution for reasons set out in Regulation 6 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006. With regard to Humanitarian Protection he would have to show substantial grounds for believing that he would face a real risk of serious harm as defined by paragraph 339C of the Immigration Rules or face a real risk of a breach of his protected human rights.

The current Country guidance

14. The Upper Tribunal having considered at great length a vast amount of background information and evidence said that what they had considered was the availability or otherwise of a safe internal flight for women who have been trafficked for the purpose of sexual exploitation. They said that this involved an assessment of the re-integration services offered by the Albanian State, NGOs and civil society organisations to such an individual. They summarised their conclusions as follows:

- i "a) It is not possible to set out a typical profile of trafficked women from Albania trafficked women come from all areas of the country and from varied social backgrounds.
- b) Much of Albanian society is governed by a strict code of honour which not only means that trafficked women would have very considerable difficulty in reintegrating into their home areas on return but also will affect their ability to relocate internally. Those who have children outside marriage are particularly vulnerable. In extreme cases the close relatives of the trafficked woman may refuse to have the trafficked woman's child return with her and could force her to abandon the child.
- c) Some women are lured to leave Albania with false promises of relationships or work. Others may seek out traffickers in order to facilitate their departure from Albania and their establishment in prostitution abroad. Although such women cannot be said to have left Albania against their will, where they have fallen under the control of traffickers for the purpose of exploitation there is likely to be considerable violence within the relationships and a lack of freedom: such women are victims of trafficking.
- d) In the past few years the Albanian government has made significant efforts to improve its response to trafficking. This includes widening the scope of

legislation, publishing the Standard Operating Procedures, implementing an effective National Referral Mechanism, appointing a new Anti-trafficking Co-ordinator, and providing training to law enforcement officials. There is in general a Horvath-standard sufficiency of protection, but it will not be effective in every case. When considering whether or not there is a sufficiency of protection for a victim of trafficking her particular circumstances must be considered.

- e) There is now in place a reception and reintegration programme for victims of trafficking. Returning victims of trafficking are able to stay in a shelter on arrival, and in 'heavy cases' may be able to stay there for up to 2 years. During this initial period after return victims of trafficking are supported and protected. Unless the individual has particular vulnerabilities such as physical or mental health issues, this option cannot generally be said to be unreasonable; whether it is must be determined on a case by case basis.
- f) Once asked to leave the shelter a victim of trafficking can live on her own. In doing so she will face significant challenges including, but not limited to, stigma, isolation, financial hardship and uncertainty, a sense of physical insecurity and the subjective fear of being found either by their families or former traffickers. Some women will have the capacity to negotiate these challenges without undue hardship. There will however be victims of trafficking with characteristics, such as mental illness or psychological scarring, for whom living alone in these circumstances would not be reasonable. Whether a particular appellant falls into that category will call for a careful assessment of all the circumstances.
- g) Re-trafficking is a reality. Whether that risk exists for an individual claimant will turn in part on the factors that led to the initial trafficking, and on her personal circumstances, including her background, age, and her willingness and ability to seek help from the authorities. For a proportion of victims of trafficking, their situations may mean that they are especially vulnerable to re-trafficking, or being forced into other exploitative situations.
- h) Trafficked women from Albania may well be members of a particular social group on that account alone. Whether they are at risk of persecution on account of such membership and whether they will be able to access sufficiency of protection from the authorities will depend upon their individual circumstances including but not limited to the following:
 - 1) The social status and economic standing of her family
 - 2) The level of education of the victim of trafficking or her family
 - 3) The victim of trafficking's state of health, particularly her mental health
 - 4) The presence of an illegitimate child
 - 5) The area of origin
 - 6) Age
 - 7) What support network will be available

My findings

- 15. I have given careful consideration to all the evidence put before me in this case.
- 16. There is no medical evidence before me and no suggestion that the Appellant has mental health or any other medical problems.

17. The Respondent does not accept that the Appellant has been a victim of trafficking. She relied on inconsistencies in the Appellant's account of her escape from Italy. I have concerns about other aspects of the Appellant's account. I must question for example why LD waited until the Appellant had returned to Italy in August 2011 before forcing her into prostitution and why he did this in the knowledge that her brother lived not far away and had been responsible for sending her home in an effort to put an end to their relationship. I note too that the Appellant said that on her first visit to Italy in April she met LD about 20 times in the afternoon in the park when she was looking after her nephew. This went on during the month she was there. She does not say what LD was doing at that time but later said that when he forced her into prostitution he had lots of girls working for him and he was rarely not around. He would follow her around the house and constantly check up on her. He was there all the time. That was her explanation for not being able to escape. It may be that he only started his 'business' after she had returned to Italy but if that is not the case it is unlikely that he would be out in the afternoons meeting her as she claims. It was she who phoned him when she returned to Albania. She said that she phoned her father when she arrived at LD's house in Italy on her return there and he threatened to kill her but there is nothing to suggest that her brother, who clearly lives in the same region of Italy as LD, made any effort to find her. There is nothing to suggest that the Appellant, when she escaped, or indeed beforehand, tried to get in touch with her sister who also lived in Italy. She claims to have been forced to have sex with nine or ten men a day and not to have been given any money apart from occasional tips. She claims that she could not go out. Even over a period of two months this must have been a very traumatic experience for such a young woman.
18. The Appellant claims that when she arrived in the UK she immediately started a relationship with AM and their first child was born on 27th August 2012, just over 10 months after arriving here. Her evidence at the hearing before the First-tier Tribunal was that she and AM had fallen in love and he looked after her. I note that he attended at the registration of the births of their three children and that the Appellant's occupation is given as 'full time housewife'. There was no suggestion in the discussions I had with the Appellant and her representative at the first hearing before me in January 2016 that their relationship was anything other than subsisting. We had a long discussion about what was required from her partner and she at no point suggested he would not co-operate because the relationship was falling apart. Before me at the resumed hearing the Appellant said that the relationship had been falling apart over the last six months. If that were so I am at a loss to understand why she did not tell me that at the first hearing. I have set out above the contents of her supplementary statement and her oral evidence before me. I do not accept that evidence. I do not accept that it was never a serious or committed relationship. I do not accept that it was 'casual'. She is a young woman who claims to have been forced into prostitution, to have been held against her will and forced to have sex with 9 or 10 men a day. I do not accept that having endured what she claims and having escaped and come to the UK she would choose to have three children in a short space of time in a relationship that she now claims was always casual. Clearly her partner supported her emotionally and financially and indeed that was her evidence before the First-tier.

19. I do not accept that if the relationship is currently as she says she would not have a phone number for the father of her children. He must have to arrange to pick the children up. She must know how to contact him if there is a problem with one of the children. She says he comes to the house twice a week to collect the children but they do not speak to each other. I said in my previous decision dealing with the error of law that I had concluded that either on the advice of her representative or of her own volition the Appellant had deliberately when presenting her appeal to the First-tier Tribunal ignored the fact that she had a partner in the UK. I think too that she has deliberately concocted the account she gave me of the current state of their relationship. She said they had never discussed what would happen if she had to return to Albania. She was unable to give a satisfactory response to a question of how her partner, who chooses to take his two older children out twice a week, would react to the prospect of losing his children if she were returned. She maintained her position that he has no idea of her history and that they have never discussed her case and /or her possible removal from the UK. I do not accept her evidence. They have been together for a long time and have had three children. She could have provided a statement from him but did not. She claims not to know what his immigration status in the UK is although at the beginning of their relationship she got the impression he had no status.
20. I have very carefully considered the evidence before me. I do not accept the evidence of the Appellant. I do not find her to have been a witness of truth. I do not accept that she is no longer with her partner. I do not accept that she was forced into prostitution in Italy. She was not trafficked from Albania. I appreciate that that does not mean that she could not have been forced to be a prostitute but for the reasons set out above I do not accept that she was. I think her account of that is a fiction. She went to Italy of her own volition and I believe she came to the UK of her own volition.
21. I have had a considerable difficulty with this case because it may well be argued that in the absence of any evidence from her partner that he will accompany her to Albania the appeal should be considered on the basis that she would be a single mother of three children returning alone. Given that her stated position until it became clear that the decision of the First-tier Tribunal would be likely to be overturned was that she lived with the father of her three children, a Kosovan who supported her and whom she loved, the onus is on her to show that that relationship no longer subsists. She has failed to do that. The onus is on her to show that it would be unreasonable to expect him to accompany her and if there are obstacles to him doing so to show what these obstacles are. She has failed to do that despite having been given the opportunity to do so. In any event I have found that she has not established that she was a victim of trafficking. She has a sister and other family in Albania and there is no reason why, on the evidence before me, she and her partner cannot make the necessary arrangements for him to join her in Albania where they can enjoy life as a family. There is no evidence that he has any right to be in the UK.
22. I have considered the best interests of the children but they are very young and I find that their best interests are served by being with their parents. There need be no interference with their family life and any interference with any private life that the

Appellant and her children have developed in the UK would in all the circumstances be proportionate to the need for effective immigration control in the UK.

23. I have considered s. 117B of the Nationality Immigration and Asylum Act 2002 but find that it does not assist the Appellant.

Notice of Decision

The appeal is dismissed on asylum grounds and on human rights grounds

The Appellant has not established a right to Humanitarian Protection in the UK.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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

Date: 4th May 2016

N A Baird
Deputy Judge of the Upper Tribunal