

**Upper Tribunal  
(Immigration and Asylum  
Chamber)**  
AA/07266/2014



Appeal Number:

**THE IMMIGRATION ACTS**

**Heard at North Shields**

**On 17<sup>th</sup> March 2016**

**Decision &  
Promulgated  
On 25<sup>th</sup> July 2016**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**ED**

**(ANONMITY ORDER MADE)**

**and**

Appellant

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms. Brakaj of Iris Law

For the Respondent: Mr. J Kingham, Home Office Presenting Officer

**DECISION AND REASONS**

1. The First-tier Tribunal has made an anonymity order and for the avoidance of any doubt, that order continues. ED (“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.

2. This is an appeal against a decision and reasons promulgated by First-tier Tribunal Judge Fox on 8<sup>th</sup> May 2015, in which he dismissed an appeal against the decision of the Secretary of State for the Home Department to refuse to grant the appellant asylum.

### **Background**

3. The appellant is an Albanian national. She left Albania on 14<sup>th</sup> July 2013 and travelled to the UK via Italy. She claimed asylum on 22<sup>nd</sup> August 2014. Her claim for asylum was refused on 19<sup>th</sup> December 2013 and her appeal against that decision was heard by First-tier Tribunal Judge Duff on 6<sup>th</sup> February 2014.

4. First-tier Tribunal Judge Duff found:

*“28. ....this appellant has been trafficked and forced to work as a prostitute, although I have serious doubts about her account of matters in Albania and I am not satisfied that she has been threatened by her family or left in the circumstances that she claims.”*

...

*37. It follows from that conclusion that this appeal must necessarily be allowed, following the decision in AS (Afghanistan), on the basis that the Secretary of State’s decision to remove the appellant was incorrect on the basis that she did not comply with her policy in that, by reason of the incorrect conclusion that the appellant had not been trafficked, the respondent did not go on to consider whether, a renewable residence permit should be issued to the appellant owing to her personal situation or for the purpose of cooperation in the investigation of criminal proceedings.*

38. *Since I have reached that conclusion that I am bound to allow the appeal to the extent of remitting it to the respondent for further consideration of whether, in the light of the fact that this appellant was trafficked, she should be granted a renewable residence permit; I consider that it is not strictly, necessary for me to go further and consider risk to the appellant on return as the question of risk on return must depend upon factors which exist as at the present and which may change in the future.*

39. *Nonetheless, I consider it proper having heard all of the evidence in the case to set out that I do not accept that this appellant has been subjected to threats from her father as I regard her very significant time studying and repeating courses until she was 22 years of age as being entirely inconsistent with a controlling and hectoring father and I consider that it may well be the case that the appellant's father as well as the appellant herself may have been duped into thinking that the appellant was leaving for a better life in the United Kingdom."*

5. The appeal was allowed on the basis that the respondent's decision was not in accordance with the law and the matter was remitted to the respondent for further consideration. The respondent revisited the matter, and issued a further decision on 21<sup>st</sup> August 2014. The respondent refused the asylum claim and it was that decision that gave rise to the appeal before First tier Tribunal Judge Fox.

### **The decision of the First-tier Tribunal**

6. First-tier Tribunal Judge Fox sets out the background to the appeal before him at paragraphs [2] to [7] of his decision. His findings are to be found at paragraphs [8] to [22] of the decision. He found at paragraph [11] that the appellant would have to deal with the issue of shame upon return to Albania but insofar as the appellant claimed to be in fear of her father, he found:

*“12. ... the Appellant was not so abused that her life within the family household would have been intolerable or give rise to any subsequent claim that she would be killed. I believe that allegation is fictitious and designed to lend weight to her asylum claim.”*

7. The Judge found the appellant to be a strong independent person capable of standing up to her father and carving out a stable position within the family environment. The Judge states:

*“15. It is fair to say that the activities that she has become involved in after leaving the family home may bring shame to the family. That is not an unreasonable proposition given the cultural disposition supported by the background information however, for the reasons mentioned above I believe more likely that the family will provide support, accommodation and assistance to her once she is returned safely to Albania. I do not accept, on the evidence before me today that there is any merit in her claim family will kill her.”*

8. The Judge found at paragraph [17] that there is adequate support from the state and NGOs for the appellant and those like her that are returned to Albania as victims of trafficking for sexual exploitation. The Judge had regard to the medical evidence before him and states at paragraphs [19] to [21];

*“... I am satisfied that she suffers from Post-Traumatic Stress Disorder (“PTSD”) as diagnosed by the Psychiatrist. The psychiatrist finds many upbeat and positive elements in the appellant’s current disablement. She continues to recover and her recovery is expected to continue. Certain note of caution can be taken from report that this is not enough to act as a bar or prohibition on the Appellant’s return to Albania.”*

*20. As indicated above I am satisfied that the Appellant is a resourceful and strong person and that she will continue to recover. There is no objective evidence before me today that the mental health*

*services in Albania are anything other than adequate, or that they do not exist at all.*

*21. It is the Appellant's medical condition that would act as the unreasonable factor in any relocation. For the same reasons as recorded above, I am not satisfied that it would be unreasonable to expect the Appellant to relocate.*

9. The Judge concluded at paragraph [26] as follows:

*"26. The Appellant claims that she fears persecution by the state and by agents within the state. For the reasons recorded above, namely, that the objective evidence clearly indicates there are numerous support mechanisms supported by the state and by NGO's in Albania that can help the appellant upon her return to Albania. I am satisfied that the traffickers will not be able to find her again as there is no merit in returning her for the purposes of sexual exploitation. The risk to them would be disproportionate. The appellant can rely upon the police and other state agencies for protection and assistance."*

### **The appeal before me**

10. The appellant advances six grounds of appeal. They are set out in summary at paragraph [2] of the appellant's grounds of appeal. Broadly stated, the appellant claims that the Judge failed to consider and apply the principles set out in the country guidance decision of **AM and BM (Trafficked Women) Albania CG [2010] UKUT 80**, and in particular failed to consider whether the appellant would be at risk if she were returned to her home area, from the person who had trafficked her to the UK. The appellant also submits that there was a failure to give reasons for the finding that she would have family support and a failure to consider whether the appellant could, in light of her medical condition and sense of shame, disclose her activities in the UK, to her family.

11. Permission to appeal was granted by First-tier Tribunal Judge Lambert on 8<sup>th</sup> June 2015. The matter comes before me to consider whether or not the decision of First-tier Tribunal Judge Fox involved the making of a material error of law.
12. The respondent has filed a Rule 24 response dated 22<sup>nd</sup> June 2015 in which she confirms that the appeal is opposed. The Rule 24 response accepts that the decision is not as full as it could be, but the respondent submits that there are adequate reasons for the findings made, and the Judge has considered the relevant risk factors identified in **AM & BM**, within his decision.
13. On behalf of the appellant, Ms Brakaj adopts the matters set out in the Grounds of Appeal and submits that the consideration by the Judge of the issues in the appeal are very brief, for what is in fact a complex appeal. She submits that although the Judge makes reference to the country guidance decision of **AM & BM** at paragraph [9] of the decision, the Judge does not apply the relevant principles. She submits that paragraphs 181 and 182 of the decision in **AM & BM** are particularly relevant to this appeal, but the Judge has failed to carry out any fact specific assessment of the issues. She submits that there is no finding as to whether relocation would prove effective for the appellant or indeed whether it is appropriate to expect the appellant to relocate to another area given her health.
14. Ms Brakaj submits that the Judge found at paragraph [11] of his decision that the appellant will have to deal with the issue of shame upon return to Albania. She submits there is no reason to believe that the appellant's family will support her now. She submits that because the appellant had defied the family in the past, it cannot be assumed that they would support her now.
15. It is submitted on behalf of the appellant that the Judge has failed to properly consider the medical evidence that was before him and in

particular the opinion of the Consultant Psychiatrist. Finally, Ms Brakaj draws my attention to the country guidance decision in **TD and AD (Trafficked women) [2016] UKUT 00092 (IAC)** that now augments the country guidance set out in **AM & MB**.

16. In reply, Mr Kingham adopts the matters set out in the Rule 24 response. He submits that the question of relocation only arises in the event that there is a finding that the appellant is at risk upon return to her home area. He submits that it is clear that the Judge rejected material parts of the appellant's evidence and having considered the evidence it was open to the Judge to find that it is more likely that the family will provide support, accommodation and assistance to the appellant once she is returned safely to Albania. He submits that the Judge was correct to record at paragraph [13] of the decision that there was no evidence before him to suggest that the appellant's former boyfriend DH has returned to Albania. Although that matter is dealt with in a short sentence at paragraph [13] of the decision, when considered together with the findings made by the Judge as to the support available from the appellant's family, no further elaboration is required. Mr Kingham submits that it does not necessarily follow that a trafficker will seek out someone who has escaped.
17. Finally, Mr Kingham submits that the Judge properly considered the medical evidence and addresses that evidence at paragraph [16] of the decision. He submits that the findings made by the Judge as to risk upon return, were open to him, and therefore any error in the Judge's approach to internal relocation is immaterial.

### **Error of Law decision**

18. The issue for me to decide is whether or not the Judge was entitled, in light of the findings made by the Judge, to conclude that the appellant has not discharged the burden of establishing a well-founded fear of persecution for a Convention reason and whether in reaching that

conclusion the Judge properly considered whether the appellant falls within the category of a person who may be at risk as set out in the country guidance decision of **AM and BM**, as now augmented by **TD and AD**.

19. In that respect I follow the guidance of the Court of Appeal in **R & ors (Iran) v SSHD [2005] EWCA Civ 982**. The Court of Appeal held that a finding might only be set aside for error of law on the grounds of perversity if it was irrational or unreasonable in the *Wednesbury* sense, or one that was wholly unsupported by the evidence. A finding that is "perverse" embraces findings that are irrational or unreasonable in the *Wednesbury* sense, and findings of fact that are wholly unsupported by the evidence. On appeal, the Upper Tribunal should not overturn a judgment at first instance, unless it really could not understand the original judge's thought process when he was making material findings. I apply that guidance to my consideration of the decision in this appeal.
20. Having carefully read the decision of the First-tier Tribunal Judge and his reasons, I reject the submission that the Judge failed to consider and apply the principles of the country guidance case. There is an express reference to the country guidance case of **AM and BM** at paragraph [9] of the Judge's decision and I have no reason to believe that having expressly stated that he has had regard to that decision, the Judge did not do so. In reaching that decision I have carefully read the findings that are set out at paragraphs [8] to [21] of the decision and I am satisfied that the Judge engaged with the guidance given.
21. Headnote (b) to **AM and BM** states that 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. At paragraph [11] of his decision, the Judge



accepted that the appellant would have to deal with the issue of shame upon return to Albania. However, the Judge rejected the appellants account of abuse at the hands of her father. The Judge found at paragraph [12] of his decision that the allegation made by the appellant is fictitious and designed to lend weight to her asylum claim. The Judge again noted at paragraph [15] that the activities that the appellant has become involved in after leaving the family home may bring some shame to the family, but he found that it is more likely that the family will provide support, accommodation and assistance to her once she is returned safely to Albania. The Judge found that there was no merit to her claim that her family will kill her. In my judgement, the findings made by the Judge are neither irrational nor unreasonable. They are findings that were open to the Judge who had had the opportunity of hearing the appellant's evidence.

22. I also reject the submission made by the appellant that the Judge failed to consider whether the appellant would be at risk if returning to her home area, from the person who trafficked her. The Judge records at paragraph [13] of his decision that the appellant trusted herself and her judgement to run away with her boyfriend DH. He noted that there was no evidence before him to suggest that the appellant's former boyfriend has turned from the UK/Italy/Ibiza to Albania. At paragraph [26], the Judge states that he is satisfied that the traffickers will not be able to find her again as there is no merit in returning her for the purposes of sexual exploitation. The risk to them would be disproportionate. The Judge has plainly considered the matter and again, in my judgement, the findings made by the Judge are neither irrational nor unreasonable.
23. I reject the submission made on behalf of the appellant that the Judge failed to give full reasons for his finding that the appellant would have family support and whether the appellant could, in light of her medical condition and sense of shame disclose her activities in the UK, to her

family. Mr. Justice Hadon-Cave in **Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC)** held:

*“It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.*”

24. In criticising the decision, Ms. Brakaj relies in particular upon the matters set out at paragraphs 10.7 to 10.9 of the Psychiatric report that was before the Judge. The Psychiatrist states that in her view, the appellant would struggle to give evidence in court and that her diagnosis of PTSD would make her vulnerable while answering questions related to her trafficking and she will find it difficult to answer questions around this area. At paragraph 10.8 of the report the Psychiatrist sets out the adjustments that could be made during the hearing to accommodate the appellant and at paragraph 10.9 the Psychiatrist expresses an opinion that the appellant will find it difficult to live or work in Albania, because of the fear that she has about returning home.
25. The Judge had the advantage of observing the appellant give evidence. The Judge refers at paragraph [16] of his decision to the appellant’s evidence about the organisation’s that may exist in Albania to help the appellant and people like her. I accept the submission made by Mr. Kingham that the appellant was not answering questions related to her trafficking, or around that area of her evidence. The Judge sets out his reasons for finding that the appellant would have family support at paragraphs [12] to [15] of his decision. The Judge found that the appellant would have the assistance of her family upon return. That was a finding that was open to the Judge on the evidence before him.

26. The decision of the Upper Tribunal in **TD and AD** refers to the significant efforts made by the Albanian government to improve its response to trafficking. The Tribunal confirmed that 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. In my judgement, a careful reading of the decision of the First-tier Tribunal Judge demonstrates that whilst brief, the decision engages with the core of the appellant's claim. The Judge reached findings that were properly open to him on the evidence.
27. In **TD and AD** the Upper Tribunal confirms that characteristics, such as mental illness or psychological scarring are relevant in considering whether living alone, would be reasonable. In my judgement the Judge properly considered the medical evidence having regard to the positive elements and the note of caution. The Judge notes at paragraph [21] of the decision that it is the appellant's medical condition that would act as the unreasonable factor in any relocation. He finds that for the same reasons as previously recorded, he was not satisfied that it would be unreasonable to expect the appellant to relocate.
28. I reject the submission that the Judge failed to fully consider the medical evidence before him. At paragraphs [18] to [20] the Judge deals with the medical evidence that was before him. He accepted that the appellant suffers from PTSD and properly noted that the appellant continues to recover and her recovery is expected to continue. The Judge noted that a certain note of caution can be taken from the Psychiatric report but he found that that was not enough to act as a bar or prohibition to the appellant's return to Albania. In my judgement, the findings made by the Judge were properly open to him on the evidence and again are neither perverse or irrational.

29. In my judgement, the decision of the First-tier Tribunal discloses no material error. It follows that the appeal is dismissed.

**Notice of Decision**

30. The appeal is dismissed.
31. An anonymity direction is made.

Signed

Date **25<sup>th</sup> July 2016**

Deputy Upper Tribunal Judge Mandalia

**FEE AWARD**

The appeal is dismissed. There can be no fee award.

Signed

Date **25<sup>th</sup> July 2016**

Deputy Upper Tribunal Judge Mandalia