



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/07921/2014

THE IMMIGRATION ACTS

Heard at Field House
On 2 February 2016

Decision & Reasons Promulgated
On 12 February 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

E P (ALBANIA)
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Panagiotopoulou, Counsel instructed by Montague Solicitors LLP
For the Respondent: Ms Alice Holmes, Specialist Appeals Team

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Bart-Stewart sitting at Taylor House on 20 May 2015) dismissing her appeal against the decision by the Secretary of State to refuse to recognise her as a refugee or as otherwise requiring international protection. The appellant's human rights were not engaged, as the Secretary of State had granted her discretionary leave to remain until 2017. The First-tier Tribunal did not make an anonymity direction, but in view of the nature of the appellant's asylum claim I consider it is appropriate that the appellant is accorded anonymity for these proceedings in the Upper Tribunal.

The Reasons for Granting Permission to Appeal

2. On a renewed application for permission to appeal, Upper Tribunal Judge Lindsley granted permission to appeal for the following reasons:
 3. The grounds of appeal contend firstly that the First-tier Tribunal erred in law by not adjourning the appeal for a fresh decision to be made by the respondent as her decision was clearly not in accordance with the law as it was made on the balance of probabilities rather applying the correct standard of proof for asylum matters; secondly it was irrational for the First-tier Tribunal to have found the appellant's lack of knowledge of the full name of her trafficker was a matter which contributed to her lacking credibility at paragraph 27 of the decision; thirdly the First-tier Tribunal did not give consideration to material matters (the controlling relationship with her father and her being brought up with a strict version of Islam) in deciding that she "had control of her life"; fourthly material evidence about the appellant's mental health was not considered when looking at her mental state; fifthly the Judge of the First-tier Tribunal expressed a negative moral judgement against the appellant when noting how quickly she had found herself to be in a new relationship.
 4. It is arguable that the credibility assessment at paragraph 27 of the decision fails to take into account the reasons that the appellant gave for not knowing her traffickers full name at paragraph 5 of her witness statement and is factually wrong in stating that the appellant has no reasons for this. It is arguable that this played a substantial role in the dismissal of the appeal as it is said that this "undermines severely the reliability of the rest of the account."
 5. It is arguable that no account is taken of the appellant's psychological state in the assessment of the credibility of the appellant's history of exploitation and abuse, so whilst a summary of her problems which include trauma, panic, depression and anxiety is set out at paragraph 26 of the decision these are not refer to in the assessment of the appellant's behaviour, or her ability to recall detail at paragraph 33 of the decision. It is also arguable that the appellant's psychological state has not been considered as an explanation as to why she quickly entered a new relationship and had a baby, instead of being seen as one which makes her history incredible as is stated at paragraph 34 of the decision.
 6. All grounds may be argued.

Relevant Background

3. The appellant is a national of Albania, whose date of birth is 1 October 1980. Her last address in Albania was an address in Fier. She attended university in Elbasan to study for a teaching degree. The course lasted four years. After graduating, she worked as a teacher in Fier from September 2003 to December 2012. Around January 2005 her father arranged for her to become engaged to a man called Ir who was from a village on the outskirts of Fier. Ir worked in Greece, and promised he would work hard and look after her. They were engaged for two years, but in the third year of her engagement in 2008 it was broken off. This made life difficult for her in the village. Her father blamed her for the broken engagement, and said it would make it difficult for her sisters to marry.

4. In September 2010 the appellant began a relationship with a businessman she knew as G. She did not know his surname. She thought he was approximately 35 years old. In December 2012 G told her that they would be going on holiday together to Italy. She accompanied him to Italy on 26 December 2012. Once they arrived in Italy, G told her they would be going to the UK because his friends there had found her a job. She told him she did not want to go to the UK because she had a job in Albania and wanted to return home. She believed that G gave her a sleeping tablet because the next thing she remembered was being in the back of a lorry. This was on 27 December 2012.
5. She arrived in the UK on 28 December 2012. When she got out of the lorry, she was met by someone called Y and taken to a house. The next day G told her that the driver who brought her to the UK was demanding £6,000 and he had borrowed the money from Y to pay the driver, but did not exactly say how much. G then told her that friends of Y were coming to the house and she would have to give them pleasure. She refused. G grabbed her by the throat, made threats on her life and also on the lives of members of her family. When G left, Y came into the room and raped her. Then two friends of Y called T and C came to the room and raped her. She was forced to see clients. She normally saw four or five but sometimes six or seven. On 1 January 2013 G returned to the house. When she told him to sort out her situation, he beat her up.
6. The next morning she felt unwell when she woke up. She tried the door and it was open. She saw there were men in the house, but they were sleeping. She saw a set of keys on the table, so she was able to let herself out and run away. She ran and ran and came to some shops. There were some ladies inside speaking Albanian and she asked them to help. She told them that she had been forced to work as a prostitute by her boyfriend. The women said they were family people and could not help her. She sat outside the shop crying and saw a lady with a child to whom she was speaking Albanian. She approached this lady and begged for help and the lady took her with her. She stayed with this lady from 2 January 2013 to February 2013. Whilst living with the lady, she met "AL" and moved in with him in February 2013. She had had a son by AL on 7 October 2013.
7. An NRM referral was made after she self identified as a victim of trafficking at the Asylum Screening Unit in Croydon. On 14 January 2014 it was accepted by the Home Office there were reasonable grounds to suspect that she was a potential victim of trafficking. As such, a positive decision was made in her case, thus affording her a recovery and reflection period until 28th February 2014.
8. The appellant was interviewed about her asylum claim on 26 June 2014, and on 24 September 2014 a competent authority caseworker issued a conclusive grounds consideration minute in which she gave her reasons for not being persuaded that it was more likely than not that trafficking had taken place. Based on the information available, she did not meet the three constituent elements of the trafficking definition on account of her adverse credibility and as such, it was not accepted conclusively that she was trafficked from Italy to the UK for the purposes of sexual exploitation.

9. She had provided no evidence to suggest she was harboured prior to arriving in the UK. She had provided no evidence she was in a relationship with a man whom she called G and it was not considered consistent she would go on holiday from Albania to Italy with a man whom she knew nothing about. It was not considered consistent she was transported to the UK in the way that she claimed and all of this was arranged by G within hours of her arriving in Italy to enable her to be taken out of the country the next day. It was not consistent that she would have discussed her family details with G when she knew nothing about him. It was not consistent that G would be able to threaten her family if he had no details about them. It was not consistent that G would tell her specifically the driver was demanding a payment of £6,000 for her journey to the UK, but then not tell her how much he had borrowed to pay off the debt. It was also not consistent that G would put himself into debt to traffic her into the UK and then leave her with his friends.
10. It was not consistent that if she had been in the circumstances that she claimed she would have not sought help and assistance immediately after escaping her captors. It was not consistent she would be in the traumatic circumstances that she claimed, if she had then been in a relationship with a man so soon after fleeing from her captors. There was no evidence that she was lured by promises of a good job, a better economic situation or more money.
11. On the same day, the same caseworker issued a lengthy Refusal Letter explaining why the appellant's asylum claim was being refused. At paragraph 48, she noted that it had been determined that she was not considered to be a victim of trafficking. At paragraphs 49 to 52, she addressed Section 8 of the 2002 Act. The appellant had delayed her claim for asylum for five months. She stated she did not claim asylum earlier because she did not know the asylum process. This was not consistent with the fact that her partner had already been through the asylum system in the UK. So her behaviour was one to which Section 8(2) of the 2004 Act applied.
12. At paragraph 53 she said that consideration had been given to her claim at its highest. This meant that it was not accepted that she would face a risk of persecution or real risk of serious harm on return to Albania.
13. At paragraph 54 onwards, she addressed the topic of sufficiency protection. She said that, as noted above in paragraph 48, it had not been accepted that she was trafficked to the UK. She stated that if she returned to Albania she would have two fears:
 - (a) She feared her father because he believed that her broken engagement had affected her sibling chances of getting married.
 - (b) She feared G and Y.
14. The appellant had failed to demonstrate the authorities in Albania would be unable or unwilling to offer her protection if she sought it. Even if her circumstances led people to believe that she was a victim of trafficking, there was evidence available that the authorities were able to offer protection in the circumstances she described. The background country evidence showed that avenues of address were available to her, and that she should have utilised them. The same background country

information showed that the authorities in Albania would be able to provide her with effective protection on return. Also, internal relocation was a viable option for her. According to her asylum interview, the only part of Albania she feared returning to was Fier which was in the south west of Albania. It was not accepted that G or Y would have either the means or the motive to trace her in Albania, and neither would her parents. She had not provided a reasonable explanation as to why she could not relocate to another part of the country, such as the capital Tirana, and start afresh. She had not demonstrated that the people she feared would either be aware of her return or indeed have any idea about where she might live in the future.

The Proceedings in the First-tier Tribunal

15. On 16 October 2014 the appellant's solicitors wrote to the Tribunal saying they were not ready for the appeal for various reasons. The respondent did not accept that their client was a victim of trafficking. However, there was no reasoning as to how the respondent had arrived at this conclusion. The issues on appeal appeared to be internal relocation and sufficiency of protection as well as honour [killing] if returned and possibly being re-trafficked. They requested an adjournment for the purposes of an expert report.
16. At the hearing before Judge Bart-Stewart, both parties were legally represented. Mr Sandhu of Montague Solicitors appeared on behalf of the appellant. Mr Das Gupta, Presenting Officer, appeared on behalf of the respondent. In a minute that he prepared on 21 May 2015, he records that a conclusive grounds consideration minute was served by his colleague on the Tribunal and on the appellant's solicitors at the December hearing, referring to the hearing which had taken place in December 2014. In the same minute, Mr Das Gupta says it is worth noting that the refusal letter is contingent on the conclusive grounds minute since the former fails to include any comments on credibility, only saying that the traffic claim has not been accepted. In future, he observes, it might be wiser to include a consideration of credibility in the asylum refusal letter.
17. The appellant gave evidence with the assistance of an interpreter. As Mr Das Gupta records in his minute (and is also shown by examination of the judge's manuscript Record of Proceedings) his cross-examination focused on the credibility issues highlighted in the conclusive grounds consideration minute. Mr Sandhu objected to some of Mr Das Gupta's questions. For instance, he objected to Mr Das Gupta putting to the appellant that G was a fictional character, asserting that the Secretary of State had never suggested this in the past. Judge Bart-Stewart ruled in favour of Mr Das Gupta. She permitted Mr Das Gupta to continue to put the case that the appellant had fabricated her claim, in line with the asserted inconsistencies relied upon in the consideration minute.
18. In her subsequent decision, Judge Bart-Stewart set out her findings of fact from paragraph [23] onwards. For present purposes, it is convenient to reproduce verbatim what the judge said at paragraphs [25] to [35]:
 25. Findings of fact not in dispute are that the appellant is 34 years old and a national of Albania. She is educated to degree level in Albania and worked a primary

school teacher for 9 years. She has a 19-month child who is British national. A letter dated 9 December 2014 to the appellant's solicitors from Maria Munir, Counselling Psychologist/CBT Therapist refers to having regular therapy session with the appellant in the form of cognitive behavioural therapy. The appellant presented with symptoms suggestive of severe level of depression, anxiety and PTSD as a result of what she described as being subjected to ill treatment and human violations in Albania. She also reported being raped and violently assaulted and forced into prostitution in the UK. It refers to her developing a good therapeutic relationship and attending regularly with her son. Whilst it refers to the impact of the appellant's past experience having had a profound impact on her mental health and the appellant possibly needing extensive psychological support there is no diagnosis of a medical condition.

26. In her letter dated 13 May 2015 addressed to the appellant she refers to the appellant identifying trauma symptoms, panic, depression and anxiety. It said that it was agreed it was inappropriate to begin work on helping her to process trauma with her son in the room. Questionnaires completed at the end of each session show these to remain unchanged within the severe range. She said the appellant indicated that she continues to experience suicidal ideation but her son is a protective factor. Ms Munir was to arrange counselling but the appellant had to arrange childcare so that she can focus during the sessions.
27. I accept that there may be mitigating reasons why a potential victim of trafficking may be incoherent, inconsistent or delay giving details of material facts and may have problems giving dates and concrete facts. However unless the appellant has reasons for not giving the full name of the person whom she claims trafficked her to the UK, and it is not part of her claim that there are, I find that this part of her account is not plausible and it undermines severely the reliability of the rest of the account.
28. I have regard to objective evidence that human trafficking for sexual exploitation from in and in Albania is prevalent. I also have cognisance of the low status afforded to women. However it is implausible that on the appellant's case of being a university educated woman who was 32 years old and had several years of teaching experience, no matter how strict her father, she would not know the full name of a man with whom she claims to have been in a relationship for 3 months and then agreed to go on holiday with him. She was not confined to the house. She was going out to teach and she was able, on her account, to have a 3 month relationship with a man who is well known in the area.
29. It is implausible that given her claimed strict upbringing that after going with him to Italy she would expect to be able to return to her family when her claim is that her father treated her badly as he considered that she had brought shame on the family by merely having a broken engagement. She then says that on 27th December she woke up in a lorry and by the following day was in the UK. She latterly came up with the surname Fier however Fier is the area where she lives.
30. Her claim that she was then told about a debt due to the lorry driver is not credible. If G abducted her it is not credible that he would have had to borrow the money from his friend. Nor is it credible that the arrangements would have been discussed with her. The appellant does not explain how G would know her

family when she knew nothing about him. The suggestion that it was someone being nice to her that caused her to go off with him is improbable.

31. Her claim that she did not know about claiming asylum I find improbable. She says that she has not told her partner details yet she claims to have told 2 sets of strangers on the street about her boyfriend forcing her to work as a prostitute and being raped. The claim is that a stranger took her. There would be no plausible reason not to the police as in her claim challenge to G she told him that she has a job to return to.
32. Despite the account of being drugged, beaten and raped by several men, and they knowing that she wanted to leave, her claim that they left her in an unlocked room and left keys on a table it seems in her room as she said she picked them up and them went downstairs (A8), also lacks veracity. In the screening interview she refers to several people in the house at the time and having been given tablets but managed to escape without anyone noticing.
33. On her account, within 6 days of leaving Albania she had gone to Italy, the UK and then escaped her captors. In those one or two days would have only had clients other than Y and his friends but in interview was unsure how many men. The appellant was a mature educated woman. I do find credible that if such events had occurred in such a brief period of time as claimed the appellant would not have remembered this detail.
34. I also do not find credible that having gone through such an experience the appellant quickly formed a relationship with and went to live with another Albanian man so quickly. She claims to the Ms Munir that she is traumatised. She does not suggest that the women with whom she lived had put her under pressure to move on. She immediately became pregnant. She is inconsistent about whether she has told him the details of her ordeal suggesting in the screening interview that eventually she did but saying she did not when the delay in claiming asylum is questioned.

The Hearing in the Upper Tribunal

19. At the hearing before me, Ms Panagiotopoulon developed the arguments raised in the grounds of appeal. She submitted that by adopting the reasoning in the conclusive minute, the judge had applied the wrong standard of proof, namely the civil standard of the balance of probabilities, as opposed to the lower standard appropriate to an asylum claim.
20. Ms Holmes said she had some sympathy with the appellant with regard to the respondent's reliance on the consideration minute, which was not a decision on the appellant's asylum claim. But ultimately it did not make any difference. The adverse credibility points made in the consideration minute equally supported a rejection of the appellant's asylum claim, applying the lower standard of proof. The minor criticisms which could be made of the judge's decision did not dent the integrity of her adverse credibility findings.
21. In reply, Ms Panagiotopoulon said that her instructions were that Mr Sandhu had submitted as a preliminary issue that the asylum decision was not in accordance with

the law, and therefore the matter should be remitted to the Secretary of State for a fresh decision on the asylum claim. The judge below had wrongly failed to rule on this preliminary issue.

Discussion

Ground 1

22. Ms Panagiotopoulou's submission in reply is encapsulated in ground 1. As I have indicated in my review of the history of the proceedings, I am not persuaded that Mr Sandhu raised as a preliminary issue for resolution by the judge the question of whether the asylum decision was not in accordance with the law. However, I accept that Mr Sandhu relied on the contents of the refusal letter as a basis for objecting to Mr Das Gupta challenging the credibility of the appellant's account of being trafficked to the United Kingdom by G for the purposes of being forced into prostitution.
23. I am not persuaded that the judge erred in law in not ruling at the hearing, or in her subsequent written decision, that the asylum decision was not in accordance with the law on the ground that the rejection of the appellant's account of past persecution appeared to have been reached through the application of the civil standard of proof, rather than on the lower standard of proof appropriate to claims for international protection.
24. My reasoning on this matter is two-fold. Firstly, the appellant (who at all material times had the benefit of legal advice from Montague Solicitors) elected to proceed to a full hearing of her appeal against the refusal of asylum, notwithstanding the defect in the refusal letter of which her solicitors were well aware. It would have been open to the appellant through her solicitors to have asked for a ruling on the preliminary issue at the hearing in December 2014. Instead, they were content to take delivery of the consideration minute which explained why the appellant's account of being trafficked to the United Kingdom (and hence her account of past persecution) was disbelieved; and she was content to proceed to a full hearing of the appeal on the merits, knowing that the Secretary of State was relying on the contents of the consideration minute for the purposes of resisting the asylum appeal.
25. Secondly, although the asylum decision letter was defective in not setting out the reasons for finding the appellant's account to be incredible, it was completely unrealistic of Mr Sandhu to expect the appeal hearing to be conducted on the basis that there was no issue between the parties as to the veracity of the appellant's account. It was clear from the asylum decision letter itself, and it became even clearer when the consideration minute was disclosed in December 2014, that the Secretary of State did not accept the appellant's account, and thus the burden rested with the appellant to prove at the appeal hearing that her account of past persecution was true.
26. So I find that Judge Bart-Stewart was right to dismiss Mr Sandhu's objections to the Presenting Officer's line of questioning.

27. The judge correctly directed herself as to the appropriate standard of proof that she needed to apply in deciding whether the appellant's account of past persecution was credible. Just because the caseworker had applied the civil standard of proof when rejecting the appellant's trafficking account in the consideration minute, it did not follow that the judge was procedurally debarred from finding that the appellant had not proved her account of past persecution to the lower standard, albeit applying similar reasoning to that applied by the caseworker.

Ground 2

28. Ground 2 is that the judge placed undue weight in paragraph [27] on the fact that the appellant did not know G's full name. It is argued that a trafficker would not supply a trafficked person with identity details in case they were identified and prosecuted at a later point. This ignores the fact that, on the appellant's own account, she perceived G as a local businessman with whom she had entered into a genuine and subsisting relationship some three months before he invited her to go on holiday with him to Italy. It was clearly open to the judge to find that it was not credible that the appellant, who was an educated professional woman, would not know her boyfriend's surname.

Ground 3

29. Ground 3 is that the judge made an error in speculating that the appellant was an educated woman who was in control of her life, and ignored her evidence that she was in thrall of her father who controlled all aspects of her life, and that she had been brought up in a strict Islamic way.
30. The judge did not ignore this evidence. He gave adequate reasons for holding that this evidence did not salvage the appellant's credibility. It was open to her to find that no matter how strict her father, it was not credible that she would not know the full name of a man with whom she claimed to be in a relationship for three months and then agreed to go on holiday with him. She was not confined to the house; she was going out to teach and she was able to have a three month relationship with a man who was well-known in the area. It was open to the judge to find, as she does at paragraph [29], that there was an inconsistency between her assertion that her father treated her badly as he considered that she had brought shame on the family by having a broken engagement, and her parallel claim that, despite her claimed strict upbringing, she went on holiday with G to Italy (despite not being engaged to him) in the expectation that she would be able to return to her family and her job when the holiday was over.

Ground 4

31. Ground 4 is that the judge made no finding on the medical evidence concerning the appellant's mental state. I find that the judge adequately addressed the medical evidence at paragraphs [25] to [27] of her decision. The judge acknowledged the opinion of a counselling psychologist/CBT therapist, Maria Munir, who said that the appellant presented with symptoms suggestive of a severe level of depression, anxiety and PTSD. The judge considered the medical evidence an integral part of her

assessment of credibility in accordance with the principles identified in authorities such as Mibanga.

32. At paragraph [27], she acknowledged the potential probative value of the medical evidence in providing “mitigating reasons” as to why a potential victim of trafficking might be incoherent, inconsistent or delay giving details or material facts. It was open to the judge to find that the symptoms reported by the appellant to Maria Munir, and the appellant’s presentation to Maria Munir, did not tip the scales in the appellant’s favour in the overall assessment of her credibility.

Ground 5

33. Ground 5 is that the judge’s finding at the beginning of paragraph [34] is a value judgment, which has no place in a determination dealing with an asylum claim. Ms Holmes agreed this was a finding that the judge should probably not have made. However, I do not consider that the judge was making a moral judgment, nor do I consider that the judge’s line of reasoning was perverse. I accept Ms Panagiotopoulou’s submission that rape victims react in different ways, and the fact that the appellant embarked on a relationship with AL within a month or so of being subjected to multiple rape does not necessarily entail that the appellant’s account is false. Nonetheless, it was open to the judge to find, having regard to the totality of the evidence, that the appellant’s behaviour with AL was more consistent with the appellant having fabricated her claim, than with the claim being true. In any event, even if this particular finding of the judge is treated as unsustainable, the remainder of her reasoning is of sufficient cogency to render her conclusion on credibility a safe one.

Notice of Decision

The decision of the First-tier Tribunal does not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

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 him or any member of their 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

Deputy Upper Tribunal Judge Monson