



IAC-AH-DN-V1

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

Appeal Number: AA/08946/2014

**THE IMMIGRATION ACTS**

**Heard at Centre City Tower, Birmingham  
On 22<sup>nd</sup> April 2016**

**Decision & Reasons Promulgated  
On 4<sup>th</sup> May 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

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

**Appellant**

**and**

**T D**

**(ANONYMITY ORDER MADE)**

**Respondent**

**Representation:**

For the Appellant: Mr D Mills, Senior Home Office Presenting Officer  
For the Respondent: Mr S Bisnauthsing of Kayders Solicitors

**DECISION AND REASONS**

**Introduction and Background**

1. The Secretary of State appealed against the decision of Judge J Pacey of the First-tier Tribunal (the FTT) promulgated on 17<sup>th</sup> June 2015.

2. The Respondent before the Upper Tribunal was the Appellant before the FTT and I will refer to her as the Claimant.
3. The Claimant is a female Albanian citizen born in March 1989 who claimed asylum on the basis of her membership of a particular social group. The asylum claim was made on 25<sup>th</sup> March 2013, the Claimant having arrived in the United Kingdom clandestinely by lorry on 23<sup>rd</sup> March 2013. The Claimant feared return to Albania as her family would kill her because she had left without their permission as she did not want to marry the man they had chosen, and she also feared the traffickers who had ill-treated her.
4. The Secretary of State refused the application on 16<sup>th</sup> October 2014 and the Claimant appealed to the FTT, and her appeal was heard on 8<sup>th</sup> June 2015.
5. The FTT found the Claimant to be credible, and noted that the Secretary of State had accepted that she had been trafficked. The FTT referred to the country guidance decision AM and BM (trafficked women) Albania CG [2010] UKUT 80 and concluded that the Claimant would be at risk if returned to Albania and allowed the appeal on asylum grounds.
6. The Secretary of State applied for permission to appeal to the Upper Tribunal. In summary it was contended that the FTT had failed to provide adequate reasons for concluding that there was no sufficiency of protection in Albania and there was no reasonable option of internal relocation.
7. The FTT had not considered the latest Country Information Guidance (the CIG) which focuses on the issue of trafficking and which was published on 19<sup>th</sup> September 2014. It was contended that failure to consider this information, which had been relied upon by the Secretary of State in refusing the Claimant's application, amounted to a material error of law.
8. Permission to appeal was granted by Judge Bartlett of the FTT who found it arguable that the FTT should have considered the guidance contained within the CIG which was more up-to-date than the decision in AM and BM.

### **Error of Law**

9. At a hearing on 4<sup>th</sup> January 2016 I heard submissions from both parties regarding error of law. It was accepted by Miss Rutherford on the Claimant's behalf that the FTT had not considered the CIG, but it was contended that this was not a material error, as even if that information had been considered and analysed, it would not have altered the decision of the FTT to allow the appeal on asylum grounds.
10. I set out below my conclusions and reasons for finding an error of law and setting aside the decision of the FTT;
  13. The FTT decision was prepared with care and no error of law is committed by making reference to the country guidance decision of AM and BM, which although published in 2010, still remains a country guidance decision. I set out

below paragraph 12.2 of the IAC Practice Direction as this relates to the treatment of country guidance decisions;

12.2 A reported determination of the Tribunal, the AIT or the IAT bearing the letters "CG" shall be treated as an authoritative finding on the country guidance issue identified in the determination, based upon the evidence before the members of the Tribunal, the AIT or the IAT that determined the appeal. As a result, unless it has been expressly superseded or replaced by any later "CG" determination, or is inconsistent with other authority that is binding on the Tribunal, such a country guidance case is authoritative in any subsequent appeal, so far as that appeal;

- (a) relates to the country guidance issue in question; and
- (b) depends upon the same or similar evidence.

However, I am persuaded that the FTT erred in law in not engaging with the CIG published on 19<sup>th</sup> September 2014, because this was relied upon by the Secretary of State in refusing the application, and the CIG contains more recent information than that considered by the Tribunal in AM and BM.

- 14. Therefore the FTT had a duty to consider that report and decide whether any weight should be attached to the information contained therein, and whether that information would justify departing from the guidance contained in AM and BM, on the basis that there had been a significant change of circumstances since the country guidance decision was published. I am not expressing a view as to whether there has been such a significant change of circumstances, but in my view the error made by the FTT was in not making any reference to the CIG when setting out findings and conclusions.
  - 15. The FTT acknowledges in paragraphs 27 and 28 when summarising the Secretary of State's case, that the Secretary of State dealt in detail with objective evidence in relation to sufficiency of protection and internal relocation. The FTT did not however go on to make any findings upon that objective evidence, which is the evidence contained within the CIG.
  - 16. Miss Rutherford accepted that the CIG was before the FTT, as it was contained within the Claimant's bundle of documents at pages 132-154. Miss Rutherford submitted that even if the FTT had considered that information, it would not have made any difference to the decision, and that may be the case, but equally it may not. It is not possible to say without that evidence being analysed and findings made thereon. Therefore I conclude that the grounds relied upon by the Secretary of State do disclose an error of law, and the error is material so that the decision of the FTT must be set aside.
11. It was common ground that there had been no challenge to the findings of fact made by the FTT, and those findings were therefore preserved. The findings are summarised in paragraph 5 of Miss Rutherford's skeleton argument dated 3<sup>rd</sup> January 2016.

12. Full details of the application for permission to appeal, the grant of permission, and the submissions made by both parties are contained in my error of law decision which was promulgated on 21<sup>st</sup> January 2016.

## **Remaking the Decision – Upper Tribunal Hearing 22<sup>nd</sup> April 2016**

### **Preliminary Issues**

13. Mr Bisnauthsing confirmed that it was not intended to call any further oral evidence although the Appellant and an Albanian interpreter were present at the hearing. Reliance was to be placed upon the findings of fact made by the FTT.
14. Mr Mills was supplied with a copy of my error of law decision that he had not previously seen, and was given an opportunity to consider the contents thereof.
15. Mr Mills advised that no reliance was now placed upon the CIG of September 2014, because a new country guidance decision, TD and AD (trafficked women) CG [2016] UKUT 00092 (IAC) had been published on 9<sup>th</sup> February 2016, after the error of law decision had been promulgated.
16. Mr Mills submitted copies of the most recent Country Information and Guidance on Albania, dated 9<sup>th</sup> September 2015 in relation to trafficking, and April 2016 in relation to women fearing domestic violence. However Mr Mills advised, that in the main he would be relying upon the guidance given in TD and AD.
17. Both representatives indicated that they were ready to proceed and there was no application for an adjournment.

### **The Secretary of State’s Oral Submissions**

18. Mr Mills indicated that he was basing his submissions upon the preserved findings of fact made by the FTT, which had not been challenged. It was therefore accepted that the Claimant could not return to her home area, and that she suffered with mental health problems, in particular PTSD, and severe depression, and there was a significant suicide risk.
19. Mr Mills submitted that the question to be considered and answered by the Tribunal, was whether the improvements made by the Albanian State to support trafficked women, were sufficient to allow the Claimant to reasonably relocate within Albania, so that there was no real risk to her from her family, or the individuals who had trafficked her when she was in the Netherlands.
20. Mr Mills submitted that the objective evidence, and the country guidance case law indicated that in general there was a sufficiency of protection in Albania, although the Claimant’s particular circumstances must be considered, and in particular her mental health problems. It was contended that the Appellant would not be at real risk from the traffickers, who were based in the Netherlands rather than in Albania.

21. I was asked to note that shelters were available for the victims of trafficking, and that it was a matter for the Tribunal to decide, whether the support offered to this Claimant would be adequate. Mr Mills made particular reference to paragraphs 82, 97, 100, and 101 of TD and AD.
22. As to the position when the Claimant left a shelter, I was asked to find that it was difficult to assess what the position would be, although Mr Mills observed that the Claimant is well educated, she does not have an illegitimate child, she is from the north of Albania, with no family support.
23. Overall, it was submitted that I could conclude that there was no reasonable internal relocation option available to the Claimant, but equally the objective and country guidance evidence, could indicate that there was a reasonable internal relocation option and sufficiency of protection.

### **The Claimant's Oral Submissions**

24. Mr Bisnauthsing agreed that the issues to be decided by the Tribunal, were whether there was a sufficiency of protection available in Albania, and a reasonable internal relocation option, as it was accepted that the Claimant would be at risk if returned to her home area.
25. I was asked to find that the background evidence indicated that the shelters provided in Albania for the victims of trafficking would be inadequate, in the Claimant's case, because she is a vulnerable person.
26. It was submitted, with reference to the domestic violence CIG of April 2016, that the situation had not improved, and section 7.2.2 confirmed that Albania did not meet the Council of Europe Taskforce Recommendations for national women's helpline and women's shelter provision.
27. At the conclusion of oral submissions I reserved my decision.

### **My Conclusions**

28. In order to succeed with her appeal in relation to her asylum claim, the Claimant must prove that there is a real risk of persecution for a Convention reason, if she is returned to Albania. The Convention reason in this case is the Claimant's membership of a particular social group. The standard of proof is a reasonable degree of likelihood, which is a lower standard than a balance of probability.
29. The findings of fact made by the FTT which were not challenged and are preserved are summarised in paragraph 5 of a skeleton argument prepared by Miss Rutherford of Counsel, who represented the Claimant at the error of law hearing on 4<sup>th</sup> January 2016 and are set out below;
  - (a) Her identity is correct.
  - (b) That she entered into a secret relationship with a Catholic man in Albania.

- (c) That her father discovered the relationship and ill-treated her as a consequence.
- (d) That her father arranged a marriage for her to an older man and that she was forced to become engaged to him.
- (e) That she fled Albania in order to avoid entering into that marriage.
- (f) That following her arrest in the Netherlands she contacted her family but her father made it clear that she had brought shame upon the family and ruined his reputation. He told her that if she returned he would happily kill her out of honour.
- (g) That she fell into the hands of people traffickers in the Netherlands.
- (h) She was forced into prostitution.
- (i) That she escaped and travelled to the UK.
- (j) That she has relatives throughout Albania and her traffickers told her that they have contacts in Albania and that they would locate her if she returned there.
- (k) If she returned to her home area she would be at risk from her family.
- (l) That she is suffering from post-traumatic stress disorder and severe depression and that if she is faced with being returned to Albania the possibility that she might commit suicide is significant.
- (m) That her mental health problems have been triggered by her past experiences and that her presence in the UK has led to an improvement in her condition and that her return to Albania would be detrimental to her health.

30. In deciding this appeal, I have taken into account the documentary evidence provided to the Tribunal, which consists of a Claimant's bundle comprising 62 pages, and a Respondent's bundle with Annexes A, G.

31. I have also considered the updated background evidence submitted by Mr Mills, and TD and AD and I set out below paragraphs (d), (e), and (h) of the headnote to that decision;

- (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.

- (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.

32. I conclude that the Claimant may be at risk if she relocated to Tirana and was not resident in a shelter. This is because the older man to whom she was forced to become engaged is from Tirana. The Claimant went to university in Tirana and met the man with whom she had a secret relationship, but this relationship was discovered by her family who live in a village in northern Albania, and she was beaten by her father as a result of this.

33. I do not find that the background evidence, or the country guidance, indicates that the Claimant, as a single woman without family support, suffering with mental health problems, would not be at risk in Tirana if she did not have the protection of living in a shelter.

34. The medical evidence in the form of a report by Dr Callaway dated 18<sup>th</sup> June 2014, indicates that the Claimant was attending regular sessions with a specialised therapist at a rape and sexual abuse centre. Dr Callaway is her general practitioner and had increased anti-depressant medication the Claimant was receiving.

35. Dr Cohen who I accept is an expert in her field, prepared a report dated 12<sup>th</sup> December 2014. She concluded that the Claimant suffers from PTSD and depression as a result of the violence she suffered from her father, and being forced into prostitution in the Netherlands by traffickers. Dr Cohen concludes at paragraph 57:

57. In my opinion she is need of specialist psychological therapy for her PTSD and depression, and these conditions most likely relate to her past experiences of both domestic violence and trafficking into prostitution.

36. The Upper Tribunal stress in TD and AD that the particular circumstances of a Claimant must be considered, and one of the factors that must be carefully considered is the Claimant's mental health. The Tribunal stated in paragraph 101;
101. Taking all of the evidence in the round we are satisfied that there is a basic level of healthcare provided in the shelters, but that there must remain concerns about the quality and extent of it, particularly in relation to mental health treatment. On the evidence before us, such care is limited to the prescription of anti-depressants and where available, counselling by shelter staff who have no formal training in psychiatry or psychology.
37. Background evidence and guidance indicates that there may be a sufficiency of protection and a reasonable internal relocation option for an individual, in a shelter if returned to Albania, depending on the particular circumstances of that individual. I do not find that this option would be a reasonable option for the Claimant, because she does have particular vulnerabilities, such as significant mental health issues.
38. In this case it is common ground that the Claimant would be alone without any family support, and in fact she would be at risk from her father. She has significant mental health issues and needs, and I find that the background evidence and country guidance, does not indicate that the mental health treatment required by the Claimant would be provided in those shelters.
39. As to life in Albania after leaving a shelter I set out below paragraphs (f) and (g) of the headnote to TD and AD;
- (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 risks 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.
40. The Claimant was found to be credible by the FTT, her evidence was that the traffickers in the Netherlands had contacts in Albania and they told her that they would be able to locate her if she returned there.
41. It is extremely difficult to ascertain where the Claimant could safely relocate if she left a shelter. The FTT finding that she could not return to her home area in the north of Albania has been preserved, and I conclude that the Claimant cannot safely



relocate to Tirana, because her former fiancé is from that city, and the relationship that she previously carried on there was discovered by her family which led to ill-treatment.

42. The Claimant would face the challenges of stigma, isolation, financial hardship and uncertainty, and I find because of her mental health problems, she will not be able to negotiate these challenges without undue hardship. The medical evidence produced on behalf of the Claimant has not been challenged, and makes reference to the risk of suicide, and the need for specialised counselling because of the experiences she has suffered.
43. I therefore conclude, that the Claimant has proved, to the lower standard of a reasonable degree of likelihood, that if she was returned to Albania, there would be no sufficiency of protection, and no reasonable internal relocation option. As it is accepted that the Claimant would be at risk in her home area, I find that she is entitled to a grant of asylum on the basis of her membership of a particular social group.

### **Notice of Decision**

The decision of the First-tier Tribunal contained an error of law and was set aside. I substitute a fresh decision. I allow the Claimant's appeal on asylum grounds.

### **Anonymity**

I make an anonymity order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Unless and until a Tribunal or court directs otherwise, the Claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 26<sup>th</sup> April 2016

Deputy Upper Tribunal Judge M A Hall

### **TO THE RESPONDENT FEE AWARD**

No fee has been paid or is payable. There is no fee award.

Signed

Date 26<sup>th</sup> April 2016

Deputy Upper Tribunal Judge M A Hall