



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/13229/2015

THE IMMIGRATION ACTS

Heard at North Shields
On 20 June 2017
Prepared on 13 July 2017

Decision & Reasons Promulgated
On 17 July 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

S. R.
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Shaw, Counsel, instructed by Kilby Jones
Solicitors

For the Respondent: Ms Petterson, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of Albania, entered the United Kingdom on 29 April 2014 and claimed asylum. That application was refused on 6 November 2015. The Appellant's appeal to the Tribunal against the refusal of her protection claim was dismissed on all grounds by decision of Judge Clarke, promulgated on 6 December 2016.

2. The Appellant was granted permission to appeal to the Upper Tribunal by decision of First tier Tribunal Judge Hodgkinson of 6 March 2017. The Respondent filed a Rule 24 Notice dated 27 March 2017 opposing that grant.
3. Thus the matter comes before me.

The hearing

4. When the matter was called on for hearing it was identified that no interpreter had been booked for the hearing, and, that Mr Shaw had been instructed on the basis that the decision of the FtT had already been set aside, and that this was the hearing of a remitted appeal to the FtT. The matter was stood down to allow him time to take instructions and/or prepare further. When the matter was called on once again he confirmed he was in a position to proceed, and to present the Appellant's appeal.

The Judge's decision

5. In the course of her decision of 6 November 2015 the Respondent accepted that the Appellant was who she claimed to be, but rejected her claim to be the victim of trafficking for the purpose of sexual exploitation. The basis of that rejection was the earlier rejection on 28 April 2015 by the competent authority on the balance of probabilities, that her account of her experiences was true, following an NRM referral. Thus, as the Judge accepted, if that was the basis of the Respondent's decision on the asylum claim, then that latter decision was flawed because the wrong standard of proof was used.
6. In fact the Respondent's decision of 6 November 2015 identified no inconsistency or lack of credibility in the Appellant's account sufficient to merit the outright rejection of her evidence of her experiences. None came to light during the hearing because the Respondent did not attend it, and thus there was no cross-examination.
7. Accordingly the Judge was entirely correct to accept, as he did, the Appellant's evidence as credible on the applicable standard of proof, and for the reasons that he gave. Thus he accepted [75] after analysis, that the entirety of her account of being trafficked from Albania to Italy, France and back to Albania, and brutalised, and forced into prostitution in those countries was true.
8. Against this factual background, as he had found it to be, Mr Shaw argued that the Judge erred in taking too narrow an approach to the country guidance to be found in TD and AD (Trafficked women) CG [2016] UKUT 92. The country guidance was that the risk of re-trafficking faced by victims upon return to Albania was a reality, and not a matter of speculation. The

nature of that risk was not confined to the risk posed by the individuals who had been involved in the original trafficking. Thus the assessment of the true nature of the risk faced by a particular individual required the Tribunal to undertake a holistic assessment of her personal circumstances which did not simply focus upon the risk posed by the individuals who had been responsible for the original trafficking. Ms Petterson for her part accepted that this was the tenor of the country guidance.

9. In this case, Mr Shaw argued, the Judge's decision disclosed a focus by the Judge that was too narrow, and one that had concentrated simply upon whether the Appellant could relocate to avoid the individuals responsible for the original trafficking, and upon the possible links between those individuals and the Albanian police. This error in the approach, he argued, had led to the conclusion that there was adequate state protection available to the Appellant [81] and that she could relocate within Albania to avoid those individuals [94] because her fiancée need not even know that she had returned to the country, and lacked the ability to trace her even if he suspected it. Thus, whilst the Judge did consider the medical evidence [85-91] he did so from the perspective of whether her return would lead to a breach of her Article 3 rights consequent upon a deterioration in her mental health, rather than from either the perspective of whether it was realistic to expect her to relocate at all, or, from the perspective of whether her vulnerability left her at risk of re-trafficking by others notwithstanding any relocation. No particular location was identified by either the Respondent or the Judge as being a realistic relocation option, for this educated young woman, permitting the Appellant to access the support the medical evidence showed that she needed, and to rebuild her life.
10. I accept that the Judge's decision disclosed no specific finding rejecting the Appellant's claim to be at risk of harm in her home area – either from those who had trafficked her previously, or, from members of her family who she said she feared would kill her to preserve the “family honour”. Indeed, if paragraph 100 of the decision was intended to be read as such, then it would be plainly inconsistent with what had gone before. The Judge had earlier specifically accepted that it was plausible the Appellant's parents had disowned her [84], and earlier had accepted the Appellant's evidence in full [75]. In the circumstances, I am satisfied that the decision must be read as accepting that the Appellant did face a real risk of harm in her home area from both her former trafficker, and her family – albeit one that the

Judge considered could be avoided either by seeking state protection, or, through the expedient of relocation.

11. In those circumstances Mr Shaw's criticism of the approach taken by the Judge to the evidence of scarring relied upon by the Appellant as corroboration of the brutality she had experienced at the hands of her traffickers and her prostitution might be said to fall away as immaterial. However I am satisfied that to simply attach no weight to the unchallenged evidence of the existence of scars as corroboration of her account for lack of a consultant plastic surgeon's report was not the correct approach; the evidence was deserving of at least some weight. Given the acceptance of the whole of her evidence, the Judge should in fact have accepted her account of the injuries that had occasioned those scars, and the circumstances in which those injuries were inflicted.
12. The Judge did accept in the light of the medical evidence that the Appellant was particularly vulnerable as a result of her mental health. That evidence (which included low mood, anxiety, and self harming) pointed to her as suffering from PTSD and needing both the daily medication, and, the counselling she received fortnightly to control its symptoms. The evidence showed that the only reason she was not receiving CBT was the lack of supply of that service to meet the demand for it; she was on a waiting list.
13. Whilst the Judge was no doubt entitled to note that the Appellant had not been referred to a consultant psychiatrist or psychologist, and thus had no formal diagnosis, it is less easy to see to what purpose he put the "significant weight" that he attached to her progress at College whilst attending an ESOL course. Mr Shaw's criticism was that this was used to undermine the weight that should otherwise have been given to the medical evidence, and the Appellant's account of her experiences, and to justify a finding that the Appellant could be expected to relocate to an unspecified location within Albania. As such he points to the guidance to be found in TD #106-112, and argues, in my judgement with justification, that the Judge's approach did not follow it.
14. The Appellant's evidence (which was accepted in full) as corroborated by the scars (to which no weight was given) meant that her appeal had to be approached on the basis that she had been subject to a significant level of brutality even within the context of a young woman who had been trafficked for prostitution against her will. As the Upper Tribunal said in TD these are important factors which must be considered when considering whether internal flight is reasonable for any individual [110].

15. After due consideration Ms Petterson accepted for the reasons set out above that there had not been an adequate analysis by the Judge of the risk the appellant faced either in her home area, or in Albania generally, because there had been no adequate analysis of the risk of re-trafficking and the ability to relocate to avoid the risks faced. Thus the Judge had erred materially. Both parties then agreed however that the appeal could nevertheless be disposed of by me on the basis of the findings of primary fact that had been made, without the need for further oral evidence. I agree.
16. In the circumstances of this appeal I am not satisfied that it is reasonable to expect the Appellant to internally relocate within Albania to avoid the risks that the Judge accepted she faced in her home area. Those risks were posed by both her family, and, her former traffickers. I note that no specific area has ever been identified by the Respondent for her prospective relocation – but even assuming the expectation to be no more detailed than that she should relocate to a city I am not satisfied that it is a reasonable one.
17. Following the guidance to be found in TD [105-112] I am satisfied that she would face very significant obstacles if she sought to relocate, which would include grave difficulty in accessing a comparable level of mental health services from which she currently benefits and which permit her to function to the level the Judge commented upon so favourably when considering her ability to follow her ESOL course. Access to services must of course include the ability to raise the funds to pay for such services. The evidence reviewed in TD did not suggest that the Albanian authorities are able or willing to provide a comparable level of support to trafficking victims upon return, to that which may be accessed in the UK for free. Absent an ability to access a level of mental health services that would allow the Appellant to function sufficiently well to support and house herself, it is very difficult to see how she could support or house herself to any adequate degree. Indeed her very vulnerability in seeking to support herself would be what would be likely to place her at an unacceptably high risk of re-trafficking.
18. I can see very little merit in the argument advanced by Ms Petterson to the effect that having been duped once, she would be wary of being duped again. She may indeed be very wary – indeed the mental health issues she has suggests that this understates the position badly, but without effective family support she would probably be forced into the “grey economy” and she would have very little choice over the risks that she would then be forced to take in seeking, and then accepting,

what employment offers she might secure from time to time. I am satisfied that she would find even mere subsistence survival extremely difficult to achieve without significant support. Given her past experiences, and her consequent mental health, I am satisfied that the Appellant has established that as one who is without family support she would face very grave difficulty in locating, accessing and benefiting from the help that she would undoubtedly need in order to support herself and survive.

19. Moreover, as a single woman, living outside the family unit, the guidance in TD is to the effect that she would be readily identifiable as being an “outsider” and as vulnerable, by those individuals minded to prey upon the weaker members of Albanian society. That pool is far wider than simply those involved in her original trafficking. Thus I am satisfied that she would be at serious risk of re-trafficking even outside her home area.
20. If those were my conclusions then Ms Petterson confirmed that the Respondent did not resist the conclusion that the Judge’s decision should be set aside and remade so as to allow the asylum appeal.

DECISION

The Decision of the First Tier Tribunal which was promulgated on 6 December 2016 did involve the making of an error of law that requires that decision to be set aside and remade.

The asylum appeal is allowed.

Deputy Upper Tribunal Judge JM Holmes
Dated 13 July 2017

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

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

Signed

Deputy Upper Tribunal Judge JM Holmes
Dated 13 July 2017