



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

Appeal Number: PA/01012/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 27 September 2017**

**Decision & Reasons Promulgated
On 27 October 2017**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**[D L]
(~~ANONYMITY DIRECTION NOT MADE~~)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Collins

For the Respondent: Mr Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Lucas promulgated on 23 March 2017, dismissing her appeal against the decision of the respondent made on 19 December 2016 to refuse to grant her asylum and humanitarian protection.

The Appellant's Case

2. The appellant is from a traditional, Muslim family from the north of Albania. She was, nonetheless, allowed to attend university obtaining a Masters degree at the University of Tirana in July 2014 and qualifying as a nurse. She began a relationship with [IS] which she kept secret, fearing that her family would discover it and not approve.
3. On completing her degree she was forced by her parents to return to live in [].
4. In September 2014 she was told that an arrangement had been made for her to marry [SN], the son of a friend of her father. She refused to do so and she was then beaten by her parents until she fell unconscious. Although she contacted her brother who lives in the United Kingdom who tried to intervene, this was rejected, the father claiming that the failure to marry [SN] caused the family dishonour and that he would rather kill the appellant. As a consequence, she agreed to marry [SN].
5. The appellant told her brother about the situation and he advised her to contact the police or to relocate within Albania with [IS] if she were forced to marry [SN]. She was not permitted to leave the home however, and in December 2014 she told her mother of the relationship with [IS]. Her mother attacked her physically and refused to accept her and she then left to travel to Tirani with [IS] and then to [] where they worked. The appellant became pregnant and told her mother which enraged her and her father.
6. It is also the appellant's evidence, set out in her witness statement that she and her partner informed the police of the situation but they were advised that they were unable to stop family feuds and warned them to be careful.
7. On 30 August 2015 whilst shopping in [] the appellant saw her father, her cousin and other men talking to a policeman and they immediately left and went to another town in the south, [] and then fled Albania.

The Respondent's Case

8. The respondent did not accept the appellant's case, considering that there were numerous inconsistencies in the statements she had given and at what she had said in interview. She also considered that in the event there was a sufficiency of protection available for her and/or that she could relocate within Albania. The respondent was not satisfied either that she met the requirements of the Immigration Rules in particular paragraph 276ADE.

The Hearing before the First-tier Tribunal

9. The judge heard evidence from the appellant as well as submissions from both representatives. The appellant was on that occasion represented by Mr Collins, as she was before me.

10. The judge found that [38] although there were some tensions with regard to the details and dates put forward by the appellant in respect of her claim, they did not detract from her credibility; that the appellant may well have the difficulties which she alleged in relation to the planned arranged marriage and that [40] her account is accepted.
11. The judge did not, however, accept that the risk on return was not founded as she could find employment in Tirana and could be supported by her brother [41] and that her situation was not analogous to a woman who had been trafficked [42]. The judge concluded [43] that the problems were essentially local and confined to the north of the country and did not accept that the father or the family would “have the means and capacity to track her down in more urbanised and cosmopolitan parts of Albania such as Tirana.” He did not accept the assertion the father could rely on the complicity of the Albanian police international as opposed to northern or local level.
12. The judge concluded that she could avail herself of state protection in another part of Albania particularly from the University City of Tirana. The judge concluded at [45]:-

“In short, the Tribunal sees no reason to doubt the account of the locally based problems with her father in the north of Albania. To that extent her claim is accepted. However, this included that she is at no risk upon return because she can relocate to another part of Albania and rely upon state protection. This being the case the Tribunal has concluded that there is no risk upon return for her or her young child.”

13. The appellant sought permission to appeal on the grounds that the judge had erred in that;
 - (i) having accepted the appellant’s account in its entirety, and that [6] appellant would be at risk in the north of Albania, he failed to consider [1] whether internal relocation was unduly harsh and it ignored the accepted fact that her father had tracked her down to [] further south than Tirana [7];
 - (ii) in concluding that the appellant could relocate on the basis that she is university educated and can obtain financial support, ignoring the problem that she would face in particular as a single mother with a child with no immediate family support in Albania; and, in not having had regard to the guidance set out in TD and AD (trafficked women) CG [2016] UKUT 00092 which by analogy applied.
14. On 30 August 2017 Upper Tribunal Judge Gleeson granted permission to appeal stating:-
 - “6. The grounds of appeal argue that the appellant’s brother had pursued her to [] which is in southern Albania and that the police

there were unable and unwilling to assist her when she approached them. The appellant's accepted evidence is that her father managed to track her there and was seen talking to the police, with a group of men. [] is five and a half hours south of the appellant's home town in [] and three and a half hours further south than Tirana where the appellant has studied for her degree. It is arguable that the judge, treating the risk as only in the north of Albania, with an error of fact capable of amounting to an error of law, it is also argued that insufficient weight was given to the appellant's status as the mother of an illegitimate child and the risk on return (see **TD and AD** at (h) in the judicial headnote and [49])."

15. Permission was granted on all grounds.

Submissions

16. Mr Collins submitted that it was evident from the decision that the First-tier Tribunal had accepted the appellant's account and thus it accepted that she had been traced to [] where the police had been unable to find her. He submitted on that basis that the applicant was at risk on return and that the judge had erred.
17. Mr Clarke submitted that it was not sufficiently clear that the judge had accepted that part of the applicant's account at which she had said that she had been traced to []. He submitted however that, having had regard to the different accounts in the interviews that it was not sufficiently clear that the judge had made a finding on that matter drawing attention to what was said in the refusal letter and differences in what the appellant had said in her written statement before the interview and subsequently.
18. I am satisfied from the judge's decision that he did accept the whole of the appellant's account. That is the only rational interpretation of what he has said at [40]. It is also sufficiently clear from what the judge said at [38] that he was aware of difficulties in the evidence and he put these to one side as he was entitled to do and for sufficient reasons, applying the lower standard of proof. I do not accept the submission from the Secretary of State that having been traced to [] was not part of the appellant's case. It is sufficiently clear that that is what she said from her witness statements which were adopted and therefore form part of the account accepted by the judge. Whilst there is, I accept, some support for the respondent's submission at [43], the judge here is confining issues to whether she would be tracked down in such urbanised or cosmopolitan parts of Albania such as Tirana. I do not consider that this could be a finding that she had not been traced to [], a smaller town towards the south of the country.
19. Whilst I accept that there are differences in what the appellant said during her interviews and subsequently, equally, I conclude that the judge was not satisfied that these undermined the appellant's case given that he repeatedly said that he accepted her evidence. That was a matter for him

to accept and he has given adequate and sufficient reasons for his conclusion. Further, the judge had the opportunity to observe and hear the appellant giving evidence and has given no indication that he did not believe what she had said. There is in my view no sufficient basis here which could be said that the judge's conclusions as to the evidence of the appellant could be considered perverse or otherwise vitiated by error of law.

20. I am satisfied that in the circumstances the judge failed properly to consider whether there would be a sufficiency of protection for the appellant elsewhere in Albania and/or whether it would be reasonable to expect her to relocate within the country. Further, it is clear that the judge fails to consider properly why he thought that although, as was accepted, the appellant's father had traced her to [], that he would not be able to follow her to Tirana where there had been contact with her from members of the family.
21. Having announced my decision, and that I was satisfied that the decision was to be remade, I heard further submissions. There was no additional evidence adduced.
22. In submissions Mr Collins submitted that the applicant would be at risk as a single mother with an illegitimate child who having relocated before had been found and whom the police had refused to assist in the past. He submitted also as the father and cousin had previously been able to track her down in Tirana, that she would be at risk on return.
23. Taking me to the Home Office's guidance he submitted there would for this appellant be no effective protection given the deeply rooted antipathy towards those such as the appellant who were seen to have transgressed the traditional mores of Albanian society and having a child outside wedlock. He submitted whether there was significant evidence, having had regards to TD & AD as well as AM and BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC) that as the mother of an illegitimate child she would stand out and would suffer discrimination, putting her at greater risk, as a result. He submitted further that she would as a result have further difficulty in reintegration to Albanian society this giving rise to undue harshness irrespective that she was likely to have financial support.
24. Mr Clarke submitted that, having had regard to what the appellant had said in interview particularly in response to questions 23 and 24 and also in her witness statement that there was no indication that her father had influence over the police or would be able to act in a specific way and thus, on the basis of Horvath, there would in the facts of this case be a sufficiency of protection. He submitted further that there was insufficient evidence to show that the appellant would be traced in Albania or that she had been traced in the past. He did, however, candidly accept that if the Secretary of State were not to succeed on the issue of her being traced, that she would lose.

25. Mr Clarke submitted that there was on the facts of this case even taking it at its highest a sufficiency of protection for the appellant but that it would not be unduly harsh to expect her to relocate despite the fact she has an illegitimate child and given that she was educated and had the support of her brother in the United Kingdom who would be able to support her financially.
26. In response, Mr Collins submitted that it was inappropriate to seek to reopen the findings of fact and that the appellant had distanced herself from the interview upon which Mr Clarke had sought to rely. He submitted that it was clear that she had been traced and whether or not the father had influence with the police was not the issue.
27. Mr Collins submitted further that as a victim of domestic violence as opposed to a victim of trafficking there will be little or no support in the forms of shelter for her as the government shelters were only available to those who had a certificate showing that they had been subjected to domestic violence which the appellant would not be able to produce.

Discussion

28. I am satisfied that it is reasonably likely that the appellant's family had travelled to [] to try to find her. There appears to be no other reason why they would have gone to the town and it is consistent with their animosity towards her and the violence already carried out. I note also that they did check upon on her when she was in Tirana.
29. The question of why they were talking to the police is a different matter. It is understandable that the appellant believed that they were discussing her but there is no evidence that that is so and there is no evidence as to the nature of the conversation between the father and the cousin and the police.
30. Nonetheless, I am satisfied to the lower standard of proof that the appellant's father and cousin had traced her to the area in which she lived. There is no evidence as to how they were able to do so. It would be speculative to consider that in a country in which an individual must register a place of residence that someone seeking to trace a member of their family could do so using official registers either with or without the aid of bribery.
31. In the circumstances, on the particular facts of this case where the appellant's family have shown a significant degree of persistence in seeking to track her down but that that to her extends well beyond her home area and I consider that there is no indication that there is anywhere in Albania where she will be safe from them.
32. There has been a change of situation since she left in that she has given birth to an illegitimate child but I do not consider that that is likely to

change the situation. The sense of shame and dishonour arising from such circumstances is identified. In **AM and BM** at [69]:

“Whilst this is in the context of women who are trafficked, there appears to be no reason why this would not apply to this appellant given the attitude already shown by her family.”

33. Further, it is evident from the Home Office guidance that domestic violence is treated as a family matter by the police. Whilst the paradigm is of violence within a marriage, appears equally to apply to the domestic violence as shown here it arises out of the shame and dishonour shown on the family. There is, looking at the situation overall, at best a reluctance on the part of the police to become involved in domestic violence cases.
34. The question then arises is whether there is a sufficiency of protection for the appellant. This was addressed in **TD and AD** at [113] and [114].
35. I note that in this case the police have expressed an unwillingness to assist the appellant.
36. Whilst as the Home Office guidance said entitled Country Information and Guidance – Albania: Women Fearing Domestic Violence (April 2016) it notes at 2.4.1 that the Tribunal had held in 2004 that the state offers a sufficiency of protection against domestic violence, it is noted also at 2.4.3 as follows:-

“2.4.3 Significant numbers of prosecutions and protection/restraining orders have been made by the courts (see Domestic violence). However, the law is not always effectively applied. Criminal proceedings are slow and courts violate procedural deadlines for reviewing protection orders and issuing decisions. Where protection orders are issued they are not always enforced. Reports state that the government is making greater efforts to address the problem but noted that police often did not have the training or capacity to deal effectively with domestic violence cases and the number of women victims who benefit from free legal aid is small compared with the need. (see Police and judiciary attitudes and responses and Police training).

2.4.5 There are legal remedies available for women fearing domestic violence, although perpetrators are not always properly prosecuted and punished by the courts. There were reports of police failing to respond to or investigate complaints of domestic violence and some cases were identified where police officers tried to reconcile the victims with their perpetrators. However, in general, the authorities are willing and able to provide effective protection for women fearing sexual or gender-based violence.”

37. I note that in this case the police have been unable to offer the appellant protection both within her home area and in south of the country. I note also on the particular facts of this case that the domestic violence is not the paradigm in which the violence is coming from a partner but it is from family. These have continued outside the domestic setting and the appellant was traced to [] a significant distance from her home area. I conclude that on the particular facts of this case that there would not be a sufficiency of protection for this appellant given that the police do not appear to be paying any proper attention to the fact that her father and cousin have carried out significant attacks on her and have also pursued her across the country.
38. Accordingly, I am satisfied that there is no sufficiency of protection for this appellant in Albania and that accordingly she is at risk of serious harm. In doing so, I note Mr Clarke's concession on the part of the respondent.
39. The question then arises as to whether the harm which the appellant fears engages one of the Convention reasons. I am satisfied that in this case the appellant is at risk in the sense that she cannot obtain sufficiency of protection of the state. It is difficult to see if women who are at risk of domestic violence are a particular social group they are not perceived as different and do have a distinct identity in Albanian society. Nonetheless in this case the animosity directed towards the appellant is because she has transgressed the mores of traditional Albanian society. There is a sufficient basis to consider that she would be at risk on that reason on the basis that she was seen as a "kurva". Certainly, the fact that she was pregnant with a child outside of marriage was something which particularly concerned her parents. Having a child outside of marriage is an immutable characteristic and there is sufficient evidence to show that women in that group are stigmatised see **AM and BD** and also **TD and AD**. See **K and Fornah [2006] UKHL 46** at [57] to [58].
40. Accordingly, I allow the appeal on asylum grounds.
41. I concluded that the applicant as a refugee, she is not entitled to humanitarian protection.
42. In the circumstances, having found that the applicant is a refugee it is unnecessary for me also to consider whether she fulfils the requirements of paragraph 276ADE of the Immigration Rules. I am, however, satisfied that the appeal falls to be allowed on human rights grounds, as removal would be in breach of the United Kingdom's obligations pursuant to article 3 of the Human Rights Convention.

SUMMARY OF CONCLUSIONS

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

2. I remake the appeal by allowing it on refugee convention and human rights grounds.

Signed

Date: 9 October 2017

A handwritten signature in black ink, appearing to read 'Jonathan Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul