



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/01696/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Manchester
On November 3, 2017**

**Decision & Reasons
Promulgated
On November 8, 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MS D L
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O’Ryan, Counsel, instructed by Barnes Harrild & Dyer
Solicitors

For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I extend the anonymity direction under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
2. The appellant is an Albanian national. She entered the United Kingdom clandestinely on April 11, 2015 and claimed asylum on August 12 2015.
3. The respondent refused her protection claim on February 10, 2016 under paragraphs 336 and 339F HC 395.

4. The appellant lodged grounds of appeal on February 19, 2016 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. Her appeal came before Judge of the First-tier Tribunal Cross (hereinafter called "the Judge") on October 28, 2016 and in a decision promulgated on January 11, 2017 the Judge refused the appeal on all grounds.
5. The appellant appealed this decision on January 23, 2017. Permission to appeal was granted Judge of the First-tier Tribunal Hollingworth on May 15, 2017. The respondent lodged a Rule 24 response dated July 12, 2017 in which she opposed all grounds of appeal.
6. The matter came before me on the above date. The appellant was present and represented as set out above.
7. Mr Bates agreed a supplemental report from Dr Thomas should be admitted as it addressed a material finding made by the Judge in relation to Dr Thomas' competence.
8. Mr O'Ryan adopted all the grounds, and with Mr Bates' consent, he advanced a further ground namely that the Judge had made a material error of fact at [15] of the decision in finding the appellant had been living with his parents.
9. Mr Bates accepted the Judge made two errors but submitted they were not material errors in law in light of a separate finding at [16] in the decision. The accepted errors were:
 - (a) The Judge had criticised the expert's expertise but failed to identify any expertise he may have had himself that enabled him to make such a finding.
 - (b) The Judge erred by finding the appellant lived with her parents when clearly the statements and oral evidence made clear she was living with her in-laws.
10. Having heard the submissions I made the following findings:
 - (a) The Judge made an adverse finding because the appellant gave evidence and he made that finding based on an assumption the expert had said the appellant could not give evidence. This was materially incorrect because the expert merely stated she was vulnerable and it may be advisable she did not give evidence.
 - (b) The Judge attached weight to the demeanour she displayed when giving evidence. Placing weight on demeanour has been found by the Tribunal to be incorrect-see MM (DRC) [2005] UKIAT 00019.
 - (c) The updated letter from the expert took issue with the Judge's finding at [25] that the disciplines of clinical psychology and psychiatry are very different. The expert confirms the Judge's finding was incorrect. This was not challenged by Mr Bates.

- (d) The Judge failed to attach any weight to the expert's finding on disassociation as set out in paragraphs 64, 76 and 77 of the original report. This must be relevant to an assessment on credibility.
 - (e) The Judge materially erred in finding the appellant lived with her parents and then used this finding to undermine her credibility on other matters.
11. These issues went to the heart of the credibility assessment and the fact there was a separate adverse finding in relation to the passport had to be considered in the light of the Judge's erroneously formed view of the appellant.
 12. For all these reasons I was satisfied there was an error in law. Both representatives agreed the case should be remitted for fresh credibility findings with no findings preserved.
 13. In light of Part 3, Section 7.1 to 7.3 of the Practice Statement I direct the matter should be remitted to the First-tier Tribunal.

DECISION

14. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I remit the asylum and humanitarian protection issues back to the First-tier Tribunal for a fresh hearing.

Signed

Date 26.08.2017




Deputy Upper Tribunal Judge Alis

**FEE AWARD
TO THE RESPONDENT**

No fee award is made because no fee was paid.

Signed

Date 26.08.2017



Deputy Upper Tribunal Judge Alis