



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

Appeal Number: PA/06044/2016

THE IMMIGRATION ACTS

Heard at Newport

On 30 November 2017

**Decision & Reasons
Promulgated**

On 01 December 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**GS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. N. Gobir, Counsel instructed by Kilby Jones Solicitors LLP

For the Respondent: Mr. I. Richards, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Mathews, promulgated on 30 November 2016, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse to grant asylum.
2. As this is an asylum appeal, I make an anonymity direction.

3. Permission to appeal was granted as follows:

“It is arguable that in making findings about the transfer of money to the appellant that the judge speculated in an impermissible manner as to how the money was transferred, and it is unclear if this issue was properly ventilated at the hearing.

It is also arguable that the judge speculated as to how women would be treated in a brothel, there being no evidence of that, and did not properly take account of the appellant’s evidence.”

The hearing

4. The Appellant attended the hearing. I heard oral submissions from both representatives following which I announced that I found that the decision involved the making of a material error of law, and that my full reasons would follow.

Error of law decision

5. I find, as set out in the grounds of appeal, that there were two main reasons why the Appellant’s account was found not to be credible by the Judge. These are with reference to the Appellant’s finances and to her experiences in the brothel.
6. Paragraphs [19] and [20] of the decision state:

“That level of poverty is in contrast with the later assertion of the appellant in her asylum interview at question 69, that having had no money before going to Macedonia, having earned no money for several months in Macedonia, she and her mother were nevertheless able within 2 days to find an agent and pay 6,500 euros (question 75 in asylum interview) for their trip to Italy.

The appellant does state that her Aunt in Italy provided some financial support to her mother when she was in Albania, but gives no detail, as one might reasonably expect of the circumstances in which a considerable sum of money is sought and received at short notice. The appellant states that the money came from her Aunt who is settled in Italy and works as a receptionist, yet there is no evidence before me as to the transfer of such funds to her, a matter that must have been conducted very quickly, that would be expected to leave an audit trail in the sending of funds from Italy to Albania, and that must have been a central consideration for the appellant at the time of her departure.”

7. As set out in the grounds of appeal, the Appellant had stated that the money used to pay the agent came from her aunt in Italy. This is contrary to the Judge’s finding that the Appellant gave no detail as to what the

money sent by her aunt was used for [20]. I find that the Judge has failed properly to take into account the Appellant's evidence.

8. I further find that the Judge has rejected the Appellant's account for her failure to provide an audit trail of this money. He states that this "must have been a central consideration for the appellant at the time of her departure". He gives no reasons why one of the Appellant's central considerations at the time would have been the need for an audit trail. He has failed to take into account her evidence as to where the money came from which was used to pay the agent, and then he has held against her the fact that there is no audit trail.

9. Further, in relation to the Appellant's finances, at [21] he states:

"The suggestion of impoverished conditions explaining the temptation to work in Macedonia, is also in contrast to a reply to question 50 in the NRM interview in which the appellant explained that her mother had funds that paid for the accommodation in Tirana."

10. The full context of question 50 is set out in the grounds of appeal. At question 52 the Appellant was asked "Did you work during this time in Tirana?" She replied "At first it was just my mum working and earning just enough to pay the rent and keep the three of us. But life was difficult financially so from November 2014 six months after the birth of my daughter I began to work as a waitress."

11. When reading the question in context, it is clear that there is no inconsistency. At question 52 the Appellant stated that life was difficult financially such that she returned to work when her daughter was only six months old. I find that in taking the answer out of context the Judge has failed properly to consider the evidence before him. He has then drawn an adverse inference from this evidence. I find that the Judge has erred in his consideration of the evidence of the Appellant's finances. I find that these errors are material.

12. In relation to trafficking, the Judge makes adverse credibility findings based on the Appellant's apparent lack of knowledge of how the brothel worked. At [25] and [26] he states:

"The appellant stated that she was never asked by a customer how much he would have to pay, was not aware of any particular limits of the time that a customer could spend, or indeed the extent of the services she should provide for a particular customer. Whilst accepting that others might have handled any financial transaction, it does not appear credible that customers would not have some limit of time on their meetings with the appellant, or understanding as to precisely how long they could spend with her for a given sum, or indeed the services that they would receive for a particular sum.

The rather sordid detailed considerations above, seen in my judgement to be fundamental elements of the interaction of prostitute and customer, yet they are entirely lacking in the appellant's account."

13. I find that the Appellant gave evidence as to what happened at the brothel. In her NRM interview, question 108, she said "they would not discuss with me how long they would stay but I don't know what they discussed before then". At question 116 when asked "were you expected to do anything that the client requested?" the appellant replied "yes".
14. The Judge has not taken this into account, but has instead found that the Appellant's evidence is not credible based on his own speculation of how the brothel would have worked. He has not referred to any background evidence to support his finding that it was not credible that the Appellant did not know how long the clients would stay with her, or the services that they would receive. The Appellant's evidence was that she was not involved in discussions about time limits or services. She was not party to these conversations. The Judge had no evidence before him on which to base a finding as to how women were treated in the brothels in Macedonia. To base an adverse credibility finding on speculation is an error of law.
15. I was referred to the case of HA v SSHD [2007] CSIH 65 which states in the headnote:

"An error of law might occur if the judge failed to take into account the relevant consideration that the probability of the asylum seeker's narrative might be affected by its cultural context, or had failed to explain the part played in his decision by consideration of that context, or had based his conclusion on speculation or conjecture."
16. I find that the judge has speculated instead of taking into account the Appellant's evidence as to how she was expected to work in Macedonia. I find that his speculation was an insufficient basis on which to reject the Appellant's case.
17. Given that these were the two main reasons that the Judge rejected the Appellant's claim, I find that they are material. The credibility findings of the judge are vitiated by material errors of law.
18. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the First-tier Tribunal. Given that I have found that the credibility findings cannot stand, and therefore given the nature and extent of the fact-finding necessary to enable this appeal to be remade, having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

Notice of Decision

19. The decision involves the making of material errors of law and I set the decision aside.
20. The appeal is remitted to the First-tier Tribunal for rehearing.

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 her or any member of her 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 30 November 2017

Deputy Upper Tribunal Judge Chamberlain