



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/14390/2016

THE IMMIGRATION ACTS

Heard at Glasgow
on 15 November 2017

Determination issued
on 16 November 2017

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

R S

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr M Matthews, Senior Home Office Presenting Officer
For the Respondent: Mr E MacKay, of McGlashan MacKay, Solicitors

DETERMINATION AND REASONS

1. The parties are as described above, but the rest of this decision refers to them as they were in the FtT.
2. The SSHD refused the protection claim of R S by letter dated 13 December 2016, principally because even taking the claim “at highest”, (a) the Albanian authorities offered legal sufficiency of protection, and (b) the appellant could relocate within Albania.
3. FtT Judge Blair heard her appeal on 14 March 2017. The SSHD was not represented. In his decision, promulgated on 5 April 2017, he did not accept the submission that her history was one of trafficking, but found that she was traumatised; she had no support or treatment available in Albania; if she approached the authorities, she

“might well face further rejection” (¶43); and it would be “wholly impracticable to expect her to relocate” (¶47). At ¶50, the judge said that the SSHD’s policy entitled the appellant to humanitarian protection, and that on the same facts the appeal also succeeded under article 3 of the ECHR.

4. The main points of the SSHD’s grounds of appeal to the UT are these:

...

3. The judge ... at ¶49 finds it likely the appellant and her husband came to the UK for economic purposes. The judge however at ¶50 concludes that the appellant is entitled to humanitarian protection. It appears [this] stems from his apparent conclusion that the appellant is Roma (which was not explicitly accepted in the refusal letter) and suffering from PTSD.

4. The judge has not engaged with the refusal letter ... in particular ... there is a complete disregard to ¶75 where the very high threshold for article 3 breach was emphasised by reference to *N v SSHD* [2005] UKHL 31.

5. The judge refers to existence of a policy ... the terms of which are not repeated in the decision ... the author of these grounds has ... failed to come across a policy to the effect that article 3 rights of an Albanian female of Roma ethnicity (even if this appellant was accepted as such) and who has PTSD (assuming the judge was correct to make this conclusion – see ¶80-83 of the refusal letter) would be breached on return to Albania.

5. On 22 September 2017, permission was granted by UT Judge Grubb, who observed:

.... It is arguable that the judge’s reasons are inadequate both in respect of the appellant reaching the article 3 threshold and what if any policy of the Home Office is referred to in ¶27. It is unclear whether it is the same one referred to in ¶25 and its terms are not cited. It may be that this latter matter can be resolved before the UT. For the present, however, I have concerns whether the judge’s ultimate finding in respect of article 3 and humanitarian protection is sustainable.

6. The gist of a rule 24 response for the appellant is as follows:

.... the judge referred at ¶25 to Home Office policy on victims of domestic violence in Albania. He ... went on at ¶27 to note the current policy position of the respondent. ... It is clear from the Home Office policy at the conclusion to the policy summary at 3.1.1 – 3.1.4 that this was the policy referred to by the judge.

It must be considered that the Home Secretary would have knowledge of the terms of her own guidance. Where a judge had previously referred to a policy document one would think that an informed reader would ... consider the policy summary. It is clear the judge was referring to the April 2016 Home Office guidance on domestic violence in Albania ... Had the author of the grounds had regard to the papers lodged and relied upon, it should have been evident what the “current policy of the respondent” referred to was.

The judge’s ultimate findings ... must be sustained as the policy states that where women can “demonstrate that there is a reasonable risk of serious harm as a result of domestic violence and have no recourse to effective state protection or internal relocation then they should be granted humanitarian protection”.

The judge accepted the evidence of the appellant in respect of her being Roma and the Home Secretary had already accepted ... that she was a victim of domestic violence (being the decision made in the NTM trafficking decision). There are no errors of law shown in

respect of the findings in respect of fear of domestic violence, no challenge to the findings in respect of her being Roma and no challenge to the findings in respect of insufficiency of protection. The Home Office guidance states that where there is no recourse to effective state protection or internal relocation an appellant should be granted humanitarian protection. There is no basis therefore on which it can be said that the judge's ultimate finding on humanitarian protection should not be sustained.

7. Mr Matthews accepted at the outset that the judge did find the appellant to be Roma, and that there was no challenge to that finding.
8. It was common ground that the respondent has a policy, "Country Information and Guidance, Albania: Women fearing domestic violence", version 1.0, April 2016, which the appellant placed before the judge.
9. It was agreed in course of submissions that ¶27 of the decision contains typographical errors, and should read as follows, accurately reflecting the policy:

... the ... policy position of the respondent is that women who can demonstrate that there is a real risk of serious harm as a result of domestic violence *and* have no recourse to effective state protection *or* internal relocation should be granted humanitarian protection.
10. Mr Matthews submitted further to ¶4 of the grounds, as follows:
 - (i) The appeal was allowed on humanitarian and human rights grounds, effectively based on article 3 of the ECHR.
 - (ii) Protection on such grounds, where the risk arises from non-state actors, does not involve the tests for internal relocation applied in refugee protection, such as undue harshness, but requires a finding of real risk throughout the country.
 - (iii) There was no explicit finding of real risk anywhere; but it was accepted that point was not raised in the grounds, and there was an implicit finding.
 - (iv) Risk had to be established at a very high level: *AH (Sudan) v SSHD* 2007 UKHL 45; *N v SSHD*; *SSHD v Said* [2016] EWCA Civ 442. The FtT did not consider that high threshold.
 - (v) It was accepted that the refusal letter refers to the high threshold only where dealing with the case on medical grounds (at ¶75), which the appellant did not advance in the FtT, and not where rejecting the case on domestic violence; but the FtT was still bound to apply the law.
 - (vi) The judge's findings at ¶47 were not enough to justify the outcome in terms of the correct threshold.
 - (vii) The outcome should be reversed.
11. Mr MacKay submitted:
 - (i) The decision was well reasoned, did not err in law, and correctly applied the respondent's policy.

- (ii) The respondent should have recognised her own policy. ¶5 of the grounds was wrong in suggesting there was no applicable policy.
 - (iii) ¶5 misrepresented the reasons for which the appeal succeeded. It was not because the appellant is Albanian, female, Roma and has PTSD. It was because, on unchallenged findings of fact, the terms of the policy were met: ¶ 25, 27, 43, 47.
 - (iv) The respondent's submissions about the generally high threshold to be met, throughout the country, were not accepted, but that was in any event irrelevant, as the respondent had to be kept to the standard recognised in the policy.
12. Mr Matthews had nothing to add by way of reply.
 13. I indicated the outcome, as follows.
 14. The respondent is to be taken to know her own policies.
 15. The decision at ¶25 identifies the policy clearly enough.
 16. The grounds are wrong about the reasons for which the appeal was allowed.
 17. Mr Matthews took a line which was open on the basis of ¶4 of the grounds; but even if the threshold is as high as argued, the point is answered by the terms of the policy.
 18. The grounds hinted faintly at criticism of one of the judge's findings of fact, but that correctly was taken no further. The refusal letter does not significantly dispute the appellant's Roma identity.
 19. On the judge's undisputed factual findings, all the requirements of the respondent's policy were met, and the appeal was bound to succeed.
 20. The appeal by the SSHD is dismissed.
 21. **The decision of the FtT stands.**
 22. The FtT made an anonymity direction, which remains in place.



15 November 2017
Upper Tribunal Judge Macleman