



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

Appeal Number: PA/00847/2017

THE IMMIGRATION ACTS

Heard at North Shields

On 20 March 2018

**Decision & Reasons
Promulgated
On 26 April 2018**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MRS A Z
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Patel, Counsel, instructed by Malik & Malik Solicitors

For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant, a national of Albania, has permission to challenge the decision of First-tier Tribunal (FtT) Judge Bradshaw sent on 20 March 2017 dismissing her appeal against the decision made by the respondent to refuse her protection claim.
2. The grounds of appeal are lengthy but comprise six main grounds:

- (i) that the judge failed to apply the correct guidance case of **TD and AD (Trafficked women) CG [2016] UKUT 92 (IAC)**;
 - (ii) that the judge failed to properly apply the principles set out in **Devaseelan**;
 - (iii) that the judge failed to give adequate reasons for her adverse credibility findings;
 - (iv) that the judge failed to give any proper consideration to the medical evidence and to weigh them in the balance when assessing credibility;
 - (v) that the judge failed to make clear findings on the mediation documents;
 - (vi) (which is really an extension of ground (i)) that the judge failed to give proper reasons for concluding the appellant would not be at risk on return given that it was accepted that she was unlikely to have financial or family support and has mental health problems and would return as a lone mother.
3. I express my gratitude to both representatives for their targeted submissions.
 4. The appellant's original asylum application, based on the claim that she was a victim of trafficking, was refused by the respondent and dismissed on appeal (by Judge Scobbie in December 2014). Her fresh claim was based largely on her fear of reprisals at the hands of her father, ex-husband and ex-boyfriend.
 5. This is one of those cases where I do not consider that any one ground on its own establishes a material error of law, but that taken cumulatively they render the decision legally flawed and unsafe.
 6. As regards (i), I agree with Ms Patel that although the guidance in **TD** is specifically directed at the issue of trafficked women, it contains important and relevant information if not also persuasive indications regarding the situation of women returned to Albania as single mothers/lone parents. Whilst the judge did refer to **TD** her only reliance on UT guidance related to the 2004 case of **DM (Sufficiency of Protection, PSG, Women, Domestic Violence) Albania CG 2004 UKIAT 00059**.
 7. As regards (ii), it is difficult to follow precisely what weight the judge attached to the previous judge's adverse credibility findings and whether they were treated as a start point or as an end point. Paragraph 52ff does not make this clear, even though some of the particulars given in the appellant's previous appeal and in this one were the same.
 8. I do not consider that ground (iii) conclusively demonstrates an inadequacy of reasons for the judge's adverse credibility findings, but the concerns I have regarding grounds (ii), (iv) and (v) (on the latter two, see below), incline me to see significant force in the ground also.

9. As regards ground (iv), the judge's treatment of the medical evidence is set out at paragraph 56:

"56. The medical and other evidence is that the appellant has benefitted from counselling and no risk factors are identified. The various counsellors have relied largely on what the appellant has told them about her experiences which have been found to be lacking credibility generally. Psychologists do diagnose and referral to a Psychiatrist is not determinative one way or the other but I agree that Dr Darcy does not appear to have professional qualifications and her evidence must be regarded in that light. The appellant has clearly been diagnosed with anxiety and depression but her medication was increased then decreased and the evidence from the Red Cross and the Craggs shows that the appellant is motivated, highly active and attending college for various courses including child care; a considerable change from the earlier findings of her being withdrawn, having little interest, low concentration, difficulty engaging and low mood".

10. There are a number of difficulties with this analysis. First, whilst the various counsellors did rely to a significant extent on what the appellant told them, the judge should still have considered their evidence as potentially independent evidence: see **AM [2012] EWCA Civ 521**. Second, more than one of the reports/letters by medical professionals stated that the appellant had anxiety and depression displaying signs of PTSD. Third, the medical evidence does not identify any decrease in medication. Fourth, it is not clear what the judge intended to find in stating that the appellant now appeared better, since the medical evidence indicated that this was largely due to the strong support she had had from a counselling network, which would not necessarily be available on return to Albania.
11. Although not on its own identifying any fatal error, ground (v) is absolutely right. The judge's treatment of the mediation documents is inconclusive.
12. Ground (vi) also seems to me to have certain force. Given the judge's own findings that the appellant would return on her own as a single mother and not have family or financial support (see paragraphs 60 and 61), it was particularly important for the judge to consider whether she could receive support beyond mere temporary shelter accommodation. Increasing my concern about the judge's assessment of this issue of risk on return, it is difficult to accept her description of the appellant as "educated" at paragraph 60 (she left education after high school) and the judge's finding that she was a resilient person appears not to have factored in to what extent this was due to her counselling support network in the UK.
13. I am also bound to say that I do not find it helpful that the judge should describe the appellant as paragraph 62 as "not particularly vulnerable". This begs the question of whether she was vulnerable and, as such someone requiring to be treated as a vulnerable witness under the Joint Presidential Guidance Note of 2010.

14. For the above reasons, and taking into account the cumulative effect of the concerns I have identified with the judge's decision, I conclude her decision is vitiated by legal error necessitating that I set it aside.
15. Since no findings of fact can be preserved the case is remitted to the FtT (not before Judge Bradshaw).
16. To conclude:

The decision of the FtT Judge is set aside for material error of law.

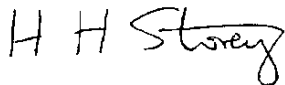
The case is remitted to the FtT.

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 him or any member of their 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: 25 April 2018



Dr H H Storey
Judge of the Upper Tribunal