



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01084/2018

THE IMMIGRATION ACTS

Heard at Field House
On 4 June 2018

Decision & Reasons Promulgated
On 21 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Patyna, counsel instructed by Kilby Jones Solicitors LLP

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Albania, date of birth 27 April 1986, who has two dependent children appealed against the Secretary of State's decision of 10 January 2018 to refuse an asylum claim made on 24 January 2013. Her appeal came before First-tier Tribunal Judge Moan (the Judge) who, on 27 February 2018 dismissed the appeal on asylum and human rights grounds.

2. At the hearing before the judge Ms Patyna appeared and submitted a helpful skeleton argument for the Judge to use as an aide memoire to the issues raised in the case. Particularly, the Judge was taken to the case of TD & AD (trafficked women) CG [2016] UKUT 00092 and AM & BM (trafficked women) Albania CG [2010] UKUT 00080. That being the context the Judge was also addressed and had written submissions relating to the Appellant as a vulnerable witness not least in the context of the Joint Presidential Guidance Note No.2 of 2010 relating to children, vulnerable adults and sensitive Appellants' guidance. Particularly the Judge was assisted by being reminded no doubt of the factors that may also assist in assessing a person's vulnerability over and above more obvious ones but including mental health, social and learning difficulties, ethnic and cultural background. The Judge was also reminded of the case of JL (medical reports - credibility) China [2013] UKUT 00145 and obviously submissions were made on the credibility of the claim in the light of the fact that the Secretary of State had relied upon a negative conclusive grounds NRM decision in June 2013.

3. The skeleton argument which I shall use for brevity and ease highlighted matters which were addressed by the Appellant as being particularly relevant to the risks of further re-trafficking and exploitation on return to Albania. In short those were:

- (1) the social status and economic standing of the Appellant and her family;
- (2) the area of origin in the north of Albania;
- (3) the Appellant's education was very limited;
- (4) the Appellant's state of health including her mental health;
- (5) the presence of an illegitimate child, now one thinks two illegitimate children, and
- (6) what support network was available and the willingness and ability to seek help from the authorities.

Those matters including one should not forget the important matter of the best interests of the children who are not UK nationals, was also addressed.

4. The judge's reasoning is I conclude inadequate in failing to deal and determine the issue of the Appellant's vulnerability and whilst it might be easy to say 'well, in all

likelihood that the decision would still be the same' if the judge had reached that conclusion, that is unsatisfactory in terms of the adequacy and sufficiency of the reasons given. The credibility of the Appellant was at the heart of her claim and her ability to give cogent and supportive evidence of her claim quite simply beyond that which was addressed in her witness statement, interview and the rest needed to be assessed fairly in the round. Given that this matter was so evidently drawn to the judge's attention it is most unfortunate that the reasoning ultimately given really does not address the issue raised sufficiently or adequately. There is of course no obligation to pick up each and every point raised but the fact is the points raised were of relevance and, even if the Judge rejected them, they needed to be properly and sufficiently addressed. For these reasons I was satisfied, attractive as Mr Tarlow's argument that ultimately the decision would be the same, that the error is not material.

5. It seems to me most unsatisfactory that this Appellant who had to wait a significant period of time for a decision in any event should not have had the matter carefully and properly dealt with fully as it should have been. In these circumstances I consider whether or not it is appropriate for this matter to be dealt with by way of a resumed hearing in the Upper Tribunal or the First-tier Tribunal. I have concluded that the correct course is for this matter to be remade in the First-tier Tribunal. I regret that that is necessary because of the delay that will inevitably be caused but I can see no fair way around it. In those circumstances therefore no findings of fact should stand. The matter must be remade again in its entirety.

DIRECTIONS

- (1) Re-list for hearing at Birmingham, not before FtTJ Moan.
- (2) Time limit – two hours.
- (2) A further Case Management Review, if needed, can be arranged with the First-tier Tribunal.

NOTICE OF DECISION

The appeal is allowed to the extent the matter is to be remade.

**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 15 June 2018

Deputy Upper Tribunal Judge Davey