



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03005/2018

THE IMMIGRATION ACTS

Heard at Field House
On 8th August 2018

Decision & Reasons Promulgated
On 29th August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

MS B.H.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Patyna, Counsel
For the Respondent: Ms Fijiwala, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
An anonymity direction is made. As a protection claim, it is appropriate to do so.

DECISION AND REASONS

1. The Appellant is a citizen of Albania born []. She arrived in the UK in January 2016 accompanied by her twin sons (date of birth 22nd May 2006). She claimed asylum shortly after arrival, naming her children as her dependants.
2. In summary the Appellant's claim to asylum is as follows. The Appellant is married and her husband, who is also an Albanian national, borrowed money from a man called [T]. Because her husband could not repay the debt, she claimed that he ran away in March 2013 and went to Greece. She said she has had no further contact with him since that time. Following her husband's departure, she and the children lived with her husband's parents.
3. In November 2014, [T] sent a gang of men to demand repayment of the debt. The debt could not be repaid. At the end of November, she said she was kidnapped by the gang and forced into prostitution. In May 2015 she escaped with the help of a client and returned to her in-laws' house. She said she was afraid that the men would come for her again, but she remained at her in-laws and the children attended school.
4. In September 2015 she travelled to Italy, by air, to the home of her cousin. The children accompanied her. She made no claim to asylum in Italy, and according to her history she stayed there for a month but then returned to Albania via road and ferry.
5. She said that it was only on her return to Albania from Italy, that her in-laws told her that the men had come looking for her again. She therefore left her in-laws' house and travelled to another village, to the home of an elderly relative.
6. In January 2016 she left Albania once again, accompanied by her children and travelled clandestinely by lorry to the UK where she claimed asylum; the claim being registered on 11th February 2016.
7. Her claim is a fear to return because the same men as before will force her once more into prostitution. The asylum claim was assessed following a screening/substantive interview. The Secretary of State refused the Appellant's claim for asylum/humanitarian protection. The claim was also assessed on Article 8 ECHR human rights grounds. After considering her claim to asylum and the best interests of her two children, the Article 8 ECHR claim was also refused.

Appeal before the First-tier Tribunal

8. The Appellant appealed to the First-tier Tribunal. In a decision promulgated on 16th May 2018, the First-tier Tribunal (Judge Sullivan) dismissed the Appellant's appeal on all grounds. The judge found the Appellant's core claim that she had been trafficked/forced into prostitution, not credible. Further the judge found that in any event there was sufficiency of protection available to the Appellant in Albania because she had support from family members, had been educated to secondary school level and had worked in Albania. It would not be unduly harsh for her to relocate with her children on a return there.

9. The Appellant sought permission to appeal that decision to the Upper Tribunal, by challenging the judge's adverse finding in respect of her international protection claim and dismissal of the appeal under Article 8 ECHR.
10. Initially there were three grounds seeking permission. The first ground claimed that the First-tier Tribunal Judge erred in refusing an application for an adjournment. Permission was refused on that ground and it is correct to say that before me, there was no further challenge to that decision.
11. The remaining grounds challenge the judge's findings on credibility, asserting that there was insufficient engagement with the Appellant's evidence, the objective evidence, and the Country Guidance cases of **TD and AD (Trafficked women) CG [2016] UKUT 92 (IAC)** and **AM & BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC)**. It was also said that the judge's flawed credibility assessment influenced her overall conclusions when assessing risk on return. Therefore, the judge's approach to sufficiency of protection on return was also flawed.
12. Permission was granted by the First-tier Tribunal and the relevant part of the grant of permission reads as follows:

“Between [20] and [31] the Judge analyses the evidence and makes credibility findings. It is (by a narrow margin) arguable that the Judge's credibility findings are tainted by consideration of plausibility and that the guidance in **TD and AD (Trafficked women) CG [2016] UKUT 92 (IAC)** and **AM and BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC)** has not been followed.”

Thus the matter comes before me to decide if the First-tier Tribunal's decision contains such error of law that it must be set aside and remade.

Error of Law Hearing

13. Before me Ms Patyna appeared for the Appellant and Ms Fijiwala for the Respondent. At the outset of the hearing Ms Patyna made application to amend the grounds seeking permission. She sought to add a further ground by reference to the medical evidence which had been submitted on the Appellant's behalf. This evidence is contained in a GP's report dated 19th April 2018. She said that she wished to include a ground that the judge had erred by failing to make a proper finding concerning the medical evidence and therefore had failed to factor into the credibility consideration, the fact that the medical evidence reported that the Appellant had suffered PTSD.
14. Ms Fijiwala objected to this application. She pointed out that the application was made late in the day without notice, and furthermore the Appellant had been represented throughout all the proceedings. There was no explanation why permission to amend was only being sought at this late stage and in any event it was clear on a reading of the FtT's decision, that the judge had specifically set out that she had taken account of the medical evidence. The medical evidence had been put forward on the basis that it was evidence of risk on return rather than evidence pointing towards credibility.

15. I declined to allow an amendment to the grounds; it is clear that the FtTJ kept in mind the GP's report [17] and [35] and the reality is that this matter is already incorporated in paragraph 11 of the original grounds.
16. Ms Patyna handed up a counsel's note dated 8th August 2018. Her submissions followed the lines of that note and she emphasised that the main basis of the challenge remains that the judge fell into error by making credibility findings without sufficiently engaging with the Appellant's evidence and the country guidance cases.
17. In particular it was said that the judge appeared to have omitted a key aspect of the Appellant's chronology regarding when the Appellant became aware of the continued risk to her from her former traffickers, following her escape from them. The Appellant's evidence was that she gained this awareness upon her return from Italy to Albania when her in-laws told her that the traffickers had been looking for her. As she had explained in her witness statement she had thought that her husband's debt to her traffickers had been paid. Ms Patyna submitted that a failure by the judge to acknowledge this chronology makes the findings at [22 to 24] of the decision unsustainable.
18. Further it was said, having made that error, the judge failed to adopt a structured approach in that she made no proper analysis of the substance of the Appellant's account regarding the way she was ill-treated. Key aspects of the Appellant's account are clearly consistent with the available country information and country guidance.
19. It was further submitted that the judge erred in her assessment of risk on return in light of the risk factors in **TD and AD**. In particular, the judge failed to have any regard to the medical evidence which confirmed that the Appellant suffers from and had been diagnosed with PTSD. Further, based on this evidence, it is contended that the Appellant should have been treated as a vulnerable witness and that the failure to give proper consideration to the medical evidence meant that an improper assessment of risk on return had been undertaken.
20. Ms Fijiwala in response submitted that the grounds in essence amounted to no more than a series of disagreements with the FtTJ's carefully considered findings. She referred first of all to the Section 8 issue. She said that a reading of [21] shows that the judge had properly considered the evidence concerning the Appellant's failure to claim asylum in Italy. The fact that before returning to Albania from Italy there was no communication made with family members detracted from the Appellant's credibility. There was no credible explanation given on why her in-laws had not sought to warn her of the men looking for her whilst she was in Italy and in safety.
21. Ms Fijiwala's submissions continued by saying that the judge had made a proper self-direction saying:

"... The order in which I set out my findings is not an indication that I have considered any one aspect of this matter in isolation from, or priority to, another. I accept that gaps and inconsistencies may arise in evidence for many reasons and are not necessarily indicative of an account that has been fabricated." [20]

22. Ms Fijiwala then referred to [29] in which the judge made a clear finding concerning the Appellant's claim that the money lenders had threatened her children. The judge found that it was difficult to reconcile this claimed threat with the Appellant's evidence that she took no precautions and the children continued to attend school. It was therefore open to the judge to make a finding on that evidence that she did not have any "sense of a family going into isolation due to fear."
23. So far as Ground 3 is concerned, Ms Fijiwala submitted that the judge has properly considered risk on return. The judge sets out that she has taken into account the medical evidence contained in the GP's report dated 19th April 2018 and acknowledged that her attention had been drawn to the country guidance cases [10]. Further the assertion that the judge should have treated the Appellant as a vulnerable witness was without merit. The Appellant was represented throughout the proceedings and there is no note that any application was made for the Appellant to be treated as a vulnerable witness. The decision read as a whole is a full and careful one. The judge found that the Appellant's core claim to asylum was not made out. The judge found further that the Appellant had a family and home to return to in Albania and accordingly there was no risk on return to her. The decision is sustainable and the appeal should be dismissed.
24. At the end of submissions, I reserved my decision which I now give with my reasons.

Consideration

25. The first challenge to the judge's decision contends that the credibility findings made by the judge are based on speculation and that the judge failed to adopt a structured approach to her credibility findings. In a careful and well set out decision I find that the FtTJ has made a proper self-direction on this point [20]. She has noted the evidence taken into account [17]. This indicates that she has taken into account the oral evidence of the Appellant together with the documentary evidence submitted which included the GPs report dated 19th April 2018. In addition, the judge has noted that her attention had been drawn to the country guidance cases [10].
26. There is particular criticism levelled at the judge's finding on the Section 8 issue. It was argued before me that the judge appeared to have omitted a key aspect of the Appellant's chronology as to when the Appellant became aware of the continued risk to her from her former traffickers. It was said that the Appellant's case is that she gained this awareness upon her return to Albania from Italy. It was at this point that she found out that traffickers had been looking for her. The criticism levelled at the judge is that she failed to acknowledge the chronology and this makes the findings at [22 to 24] unsustainable. I find that there is no merit in this challenge. The judge has carefully set out her reasons for finding the Appellant's explanation of her decision to return to Albania to be not credible. The Appellant's story did not ring true when looked at in the context of the evidence as a whole.
27. In addition, whilst it is claimed that the Appellant has given an internally consistent account, that is not correct. If one looks at the asylum interview, there is no mention there of her later evidence where she says she returned from Italy because she believed

that the debt had been paid off. A further reason given now for returning from Italy was that her cousin could no longer accommodate her. Again, no mention of this was made in the asylum interview. I find therefore that it was open to the FtTJ to assess that the Appellant's story did not add up in that she was saying on the one hand that she could not stay at her in-laws' house on her return from Italy because she feared the gang and yet whilst away in Italy with her children, there had been no communication to alert her that the men had been looking for her again. It was open to the FtTJ to find that this did not square with her original evidence that she went to Italy hoping that things would calm down with these men.

28. The FtTJ then looked at the rest of the Appellant's claim. She gave clear reasons why she did not accept the Appellant's story surrounding her escape from her claimed persecutors but more particularly noted on the Appellant's own account that she took no precaution concerning her children, who still attended school. This was despite an assertion that the men had threatened to harm her children. It was open to the FtTJ to say that altogether, looking at the claim in the round, she found that it simply did not add up to be a credible one.
29. The contention that the Appellant should have been treated as a vulnerable witness by the FtTJ is devoid of merit. The Appellant was represented throughout the proceedings by a competent representative who was there to represent her interests and who would no doubt have made the appropriate application if necessary. The FtTJ noted the GP's report. In addition, reference is made to it in [35] showing that the Appellant accessed healthcare for depression with symptoms of PTSD and for amenorrhoea. The GP's short report gives a bare outline only of the Appellant's condition and does not contain any detailed analysis of her history.
30. The FtTJ, having found that the Appellant's core claim was not credible, was entitled to find that there would be no risk on return to the Appellant. There was no need to consider the CG decision of **TD and AD**. As Ms Fijiwala submitted, taking the Appellant's case at its highest, the Appellant does not meet the profile of a vulnerable person. Whilst it is accepted that she has some mental health issues, she has received counselling and there are facilities available in Albania for treating depression. She has support in Albania available from her relatives, has been educated to secondary school level and has work experience of working in a factory. These are all findings made by the judge based on the evidence.
31. At this point I note that Ground 3 (paragraph 11) claims that, "the Judge gave no consideration to the obstacles upon returning to Albania as an unmarried mother of an illegitimate child without any support network." I find no merit in this contention as it has always been the evidence that the Appellant is married and her twin sons were born in wedlock.
32. Finally, having made her decision on the asylum claim, the judge turned her attention to the Appellant's Article 8 ECHR claim. She fully sets out her reasons for rejecting the Article 8 claim and as far as I can see there is no challenge raised to that part of the decision.

33. Accordingly, for the foregoing reasons I find that the decision of the FtTJ discloses no material error of law. This appeal is therefore dismissed.

Notice of Decision

The First-tier Tribunal did not materially err in law in dismissing the Appellant's appeal on all grounds. The First-tier Tribunal's decision stands. Accordingly, the Appellant's appeal to the Upper Tribunal is dismissed.

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

C E Roberts

Date

20 August 2018

Deputy Upper Tribunal Judge Roberts