



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/03404/2017

**THE IMMIGRATION ACTS**

Heard at North Shields  
On 19<sup>th</sup> September 2018

Decision & Reasons Promulgated  
On 24<sup>th</sup> October 2018

**Before**

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

**Between**

Ms A D  
(ANONYMITY DIRECTION MADE)

**Appellants**

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

**Respondent**

**Representation:**

For the appellants: Ms Cleghorne, Counsel, instructed by Kilby Jones, Solicitors  
For the respondent: Mr Duffy, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The appellant is an Albanian national who claimed protection on the basis she had been forced into prostitution and would be at risk if returned from traffickers in her home country and because she is an unmarried mother. She also claimed to fear her family.

2. Her account is that she is from a strict Muslim family and her father required her to leave school at the age of 14. She lived with her parents, an older brother and a younger sister outside Tirana.
3. At a wedding she became friendly with a man called Altin They would occasionally meet in secret and talk on the telephone. He said he had a building company in France and would travel back and forward.
4. In 2011 her parents told her they were arranging her marriage. To avoid this in December 2011 she went with Altin to France. She telephoned her mother and told her where she was. Her father threatened her over the phone.
5. Shortly after this Altin told her that she was to work as a prostitute which she did. She was not allowed to leave the house. In December 2012 they returned to Tirana where again she was made to work as a prostitute.
6. She became pregnant and in June 2014 Altin took her to a clinic for an abortion. She went to the toilet and escaped through a window and hide in a hospital van parked with the door open which then drove off. She made her way to her cousin's house in Tirana who arranged her travel with an agent to the United Kingdom.
7. She gave birth here on 21 September 2014. At the time of the First-tier hearing she was again pregnant, stating that she had begun another relationship with an Albanian national in the United Kingdom but he disowned her when he learnt of her work as a prostitute.
8. The respondent referred the matter to the Competent Authority who made a negative trafficking decision. A claim for protection was refused.

#### The First tier Tribunal

9. Her appeal was heard by First-tier Tribunal Judge Cope on 23 November 2017 and dismissed in a decision promulgated on 18 January 2018. The judge identified the principal issue was the appellant's credibility. The judge found consistency in some aspects of her claim, particularly relating to account of her fear of Altin and her family. This was also consistent with the country information on the position of women and domestic violence in Albania. The judge considered her potential vulnerability as a witness.
10. The judge had been provided with various reports relating to the appellant's mental health. He had a letter from a Mr Davies, a nurse with the mental health team; letters from a Ms Walters, a counsellor as well as a letter from the appellant's GP and a care plan and patient summary. The judge made an assessment of these reports from paragraph 53 to 66.
11. At paragraph 68 onwards the judge comments on the appellant's account including her claimed travel. The judge had been provided with an expert

report in relation to Albania. The report deals specifically with documentation and cross-border monitoring. The judge also had the benefit of enquiries made by the respondent with the Albanian authorities on this issue. At paragraph 81 the judge records that enquiries made by the British Embassy revealed that passport control revealed the appellant had travelled by airline in September 2013 to Istanbul and there was no record of a return journey to Albania. At paragraph 94 the judge commented that it was not credible the appellant could have travelled into a Schengen travel area and on to France using an Albanian identity card rather than a passport.

12. The judge then set out details about inconsistencies in the account given by the appellant. The conclusion was that the appellant was not credible the judge rejected her claim relationship with Altin and her account of being trafficked. The judge then went on to consider whether there would be any risk for her simply by being returned as a failed asylum seeker and concluded there was not.
13. Regarding article 8 the judge referred to the best interests of her child and concluded they lay with the appellant. The judge concluded it would not breach article 8 to return the appellant and her child to Albania with the judge pointing out that a family certificate produced suggested her younger sister was also a single-parent. The inference drawn was that the appellant would have family support on return.

#### The Upper Tribunal

14. Permission was granted on the basis it was arguable the judge erred in law in the evaluation of the appellant's credibility and the treatment of the medical evidence supplied.
15. The grounds firstly seek to fault the judge for suggesting that the medical evidence was dependent upon the account given by the appellant. The 2<sup>nd</sup> ground was that the reasoning in the decision was flawed particularly in the comment that the appellant's evidence was vague. The 3<sup>rd</sup> ground relates to an argument the judge conflated credibility with plausibility particularly in relation to her account of escaping from the abortion clinic. It was also argued the judge erred in the treatment of the travel documentation with the suggestion being that she travelled on documentation supplied by Altin.
16. At hearing, Ms Cleghorne relied upon the grounds advanced. She referred to the judge's comments that the medical evidence about the mental health of the appellant was reliant upon what she told the clinicians. However she had seen Ms Walters for 17 counselling sessions. She submitted that the judge's reasoning in relation to this evidence was flawed. She also argued irrespective of the cause, the judge failed to factor in the opinions about the appellant's mental state when considering her credibility. She said this

applied to the overall assessment of the appellant's credibility and sought to criticise the judge's comments that her account was vague.

17. Mr Duffy in response to be different approach, focusing upon the negative decision of the Competent Authority. I was referred to the decision of the Upper Tribunal decision of AUJ (Trafficking - no conclusive grounds decision) Bangladesh [2018] UKUT 00200 (IAC) which post-dated the decision. In submissions in that case reference was made to the Court of Appeal decision in SSHD v MS (Afghanistan) [2018] EWCA Civ 594 as authority for the proposition that where a negative trafficking decision by the Competent Authority had not been challenged by way of judicial review the First-tier Tribunal may only entertain an indirect challenge to such a decision if the trafficking decision is demonstrated to be perverse or irrational or one which was not open to the Competent Authority.
18. At paragraph 53 of AUJ (Trafficking - no conclusive grounds decision) Bangladesh [2018] UKUT 00200 (IAC) the Upper Tribunal said:

"It is clear from both AS (Afghanistan) and MS (Afghanistan) that, if (and only if) the Competent Authority has reached a negative "Conclusive Grounds" decision that was irrational or perverse or not open to it and the trafficking or modern slavery claim is relevant to the decision to remove, the First-tier Tribunal must make findings on the trafficking / modern slavery claim to the extent that such findings are relevant on deciding the appeal ..."
19. At para 62:

"In my view, applying AS (Afghanistan) and MS (Afghanistan), cases in which the Competent Authority has reached a "Conclusive Grounds decision" should be approached as follows:

  - (i) n/a
  - (ii) In cases in which the Competent Authority has reached a negative "Conclusive Grounds decision" but the appellant continues to rely (in his statutory appeal) upon evidence that he has been a victim of trafficking or modern slavery, the judge should decide, at the start of the hearing and before oral evidence is given, whether the decision of the Competent Authority was perverse or irrational or not reasonably open to it. At this stage, evidence subsequent to the decision of the Competent Authority must not be taken into account. If (and only if) the judge concludes that the Competent Authority's decision was perverse or irrational or one that was not reasonably open to it, that the judge can then re-determine the relevant facts and take account of subsequent evidence."
20. Both representatives suggested that if an error of law were found the matter could be remitted to the first-tier Tribunal for the two-stage approach advocated.

## Consideration

21. I begin with how the decision of the competent authority was dealt with. Firstly, a decision had been made by the Competent Authority to the higher standard that the appellant had not been trafficked. No issue was taken at the hearing about the rationality of that decision. I appreciate that AUJ (Trafficking – no conclusive grounds decision) Bangladesh [2018] UKUT 00200 (IAC) post-dated the appeal hearing. Nevertheless there was existing jurisprudence on this point.
22. It is also clear from the decision that the judge did not simply adopt the negative decision of the Competent Authority. Rather the judge dealt in depth with the claim being made and did not find the appellant to be credible. At paragraph 42 onwards the judge appears to have taken it upon himself to evaluate the interplay of the Competent Authority's decision with the decision on the protection claim. At paragraph 47 the judge concludes that notwithstanding the negative decision he must make his own decision.
23. Consequently, I find no material error of law established in relation to this issue.
24. The principal issue raised in the grounds of appeal relate to the judge's treatment of the evidence about the appellant's mental state. Much has been made by Ms Cleghorne of the fact the appellant attended a counsellor, Ms Walters, on 17 occasions. I turn to what the judge said. At paragraph 54 the judge refers to Ms Walters applying 3 questionnaires used in her assessment. These are described as clinical measuring questionnaires and refers to the score as being fairly consistent and it was clear that much of her anxiety was caused by her asylum claim being rejected. There is also reference to difficulties in relationships with other women at the hostel where she was staying. She was described as someone who did not deal easily with confrontation.
25. The judge referred to this paragraph 55. The judge acknowledges that the counsellor has had the advantage of seeing the appellant over an extended period. The judge makes the point that his task is different and that he is involved in a fact-finding process. The judge also points out that he has not received details about Ms Walters expertise. Whilst Ms Walters concluded by saying the appellant disclosed symptoms of post-traumatic stress disorder and suggests she has experienced severe trauma the judge comments that she does not refer to the diagnostic criteria used.
26. It was for the judge to evaluate this evidence. I can find no fault with the comments made by the judge. There was also a report from Mr Davies, a nurse with the mental health team. The letter is dated 12 June 2015 and states that the appellant was recently assessed. He said that her symptoms were highly suggestive of complex post-traumatic stress disorder. He writes that

the appellant was the victim of human trafficking. In this regard he is relaying the account given. It is for the judge to decide if that account is true. I find no fault with the judge's comments and 53.

27. At paragraph 61 the judge then comments on the GP letter. The GP had met the appellant on 5 occasions over a 10 month period. The judge makes the legitimate point that the role of the GP is not to challenge the underlying account but to perform a professional opinion as to the presentation and best treatment. The judge refers to the medical records and finds nothing of any great relevance. The judge also referred to the absence of any psychiatric report or incident from the consultant psychiatrist.
28. There does appear to have been an assumption that the appellant's account is true in the reports. There is nothing to indicate that when the reports from the healthcare professionals were being obtained they were made aware of the respondent's view of the underlying claim. JL (medical reports-credibility) China [2013] UKUT 00145 (IAC) points out that the more a diagnosis is dependent on assuming that the account given by the appellant was to be believed, the less likely it is that significant weight will be attached to it
29. At the outset at paragraph 49 the judge acknowledges the nature of the appellant's claim and that she potentially could be regarded as a vulnerable witness. The judge indicates the medical evidence is being taken into account in assessing credibility. Regarding the symptoms displayed the judge makes a legitimate point at paragraph 66 that the cause may not be that relayed by the appellant.
30. In the context of assessing her credibility the judge refers to vagueness about aspects of her account. The judge accepts that evidence is not to be regarded as a memory test and there may be good reasons why a witness cannot recall events particularly if they are linked to trauma. Having acknowledged this the judge then concluded this would not explain the vagueness. The judge then went on to give examples. Again, I find nothing wrong with this approach.
31. The judge prefaces his opinion on her escape by pointing out at paragraph 26 that whilst something may be implausible that this does not necessarily mean it did not happen. He then deals with specific issues, such as the documentation for travel as well as the appellant's sister possibly being a single parent. The latter is rightly a peripheral point but nevertheless relevant to credibility. The judge makes other comments about vagueness in relation to where she was and so on and draws adverse inferences. Again, I find this all part of the legitimate evaluation process albeit peripheral.
32. Ultimately, I find this to be a balanced, carefully prepared decision in which I can find no material error of law established.

**Decision**

No material error of law has been established in the decision of First-tier Tribunal Judge Cope. Consequently, that decision dismissing the appellant's appeal shall stand.

Francis J Farrelly

Date 17 October 2018

Deputy Upper Tribunal Judge.