



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

Appeal Number: PA/08193/2017

THE IMMIGRATION ACTS

Heard at Field House

On 8 February 2018

**Decision & Reasons
Promulgated
On 17 April 2018**

Before

**RIGHT HONOURABLE LORD BOYD OF DUNCANSBY
SITTING AS A JUDGE OF THE UPPER TRIBUNAL**

Between

MB

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Reid, Counsel

For the Respondent: Mr Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Albania born on [] 1991. She is from northern Albania. She appeals against a decision of First-tier Tribunal Judge Chana promulgated on 2 October 2017. In that decision Judge Chana refused an appeal against a decision of the Secretary of State dated 10 August 2017 refusing her appeal for asylum and humanitarian protection in the UK.
2. The appellant entered the UK on a student visa on 3 April 2015. The visa was valid until 26 March 2016. That visa was curtailed on 12 October 2015

to expire on 11 December 2016. Further submissions under article 8 were made and refused on 25 January 2017. She then claimed asylum.

The First-tier Tribunal's decision

3. The appellant's claim was that she had come to the UK to study. She was paid for by her parents who supported her. They were well off in Albania. When she was here she met and started a relationship with a man AI from Kosovo. That was in June 2015. In about November that year she told her parents about the relationship. They disowned her. They told her that they had arranged a marriage with someone in Albania and she had not kept her promise to return to Albania. She claimed that she was fearful of her family and in particular her father and brother. She believed that she would come to harm if she returned to Albania and that there was insufficient protection for her from state authorities. The appellant had had no contact with her family since November 2015.
4. In late November 2016 AI went to Albania and sought to make contact with the family through the Peace Reconciliation Missionaries of Albania (also referred to as the commission) as intermediaries. That was unsuccessful. The family had made it clear that they did not wish to speak to him.
5. Judge Chana did not believe either the appellant or AI. She gave a number of reasons. First she said that there was a contradiction between the appellant's evidence and AI's. The appellant said that Nicoll (sic) (the name is actually Nikoll Shullani) from the commission had telephoned her parents. AI said that Nikoll Shullani had gone to her parent's house. In any event the message was the same; they refused to see AI.
6. Secondly the appellant had claimed that AI went to Albania on 27 November 2015 and made contact with the commission on 13 November. However Judge Chana said that the documentary evidence was to the effect that he arrived in Albania on 27 October. Judge Chana further found that he had gone to Albania for a month before making contact with the commission. She said that there was no credible reason why he would wait a month before contacting the commission.
7. Thirdly Judge Chana said it was not credible that the appellant's parents would allow her to leave Albania and genuinely believe that she would marry someone that they had arranged in Albania. If the appellant's parents were as traditional as the appellant made out they would not have sent her to the UK in the first place. They must have known that she could meet somebody and start a relationship.
8. Fourthly Judge Chana said that the appellant had not told her parents about the relationship for five months because she wanted to be sure about him. Yet Judge Chana said that she had moved into the flat with AI after two weeks. She would not have moved in with him if she was not

sure about the relationship. The Judge also pointed to an inconsistency in the timeline of when she said she met him and moving in with him. In any event there was no credible evidence that the appellant had been living with AI since June 2015.

Permission

9. The appellant lodged four grounds of appeal. Permission was granted by First-tier Judge Saffer on 14 December 2017. He noted that it was arguable that the Judge may have materially erred in not considering the evidence from the appellant when rejecting her credibility and in misapplying cultural views and guessing what her parents would think or do. All grounds were arguable.

Grounds of Appeal

10. The first ground is to the effect that Judge Chana had made credibility findings without fully considering the evidence. She had found that AI had gone to Albania on 27 October on the basis of evidence from the hotel in Tirana which said that he had arrived on that date. However in her witness statement the appellant had explained that this was a mistake and she produced the flight tickets in his name which vouched that he had travelled out on 27 November returning on 4 December 2016. This error was carried over into the next paragraph where the Judge had made adverse comments about him staying in Albania for a month before he contacted the commission.
11. The second ground was a failure to consider material evidence in particular a letter from the chairman of the Peace Reconciliation Missionaries of Albania which corroborated AI's account of his trip to Albania. Further, Judge Chana had failed to consider material from the media which the appellant had submitted to show a lack of protection for victims of domestic violence in Albania. Although she had relied on country guidance she had not explained why she had rejected this evidence.
12. Thirdly at paragraphs 28 and 29 Judge Chana had found that it was not credible that the appellant's parents would have allowed her to go to the UK to study when they had arranged a marriage for her in Albania. She had found that if the parents wanted her to return and marry they would have explicitly forbidden her from having a relationship in the UK. This approach was flawed because the judge considered plausibility from a western perspective; **Ibrahim Ali v Secretary of State for the Home Department [2002] UKIAT 07001**, para 3. She failed to distinguish between plausibility and incredibility; **MM (DRC - plausibility) Democratic Republic of Congo [2005] UKIAT 00019**, para 19. Ms Reid explained that it was important to see this evidence in the cultural context. The parents clearly thought that they had a high degree of control over her as a result of her upbringing. It would not be necessary to give explicit instructions forbidding her from having a relationship.

13. Fourthly the Judge had found that there was no credible evidence that she had been living with AI since June 2015. The appellant had submitted evidence in support of her claim but no reason was given for rejecting the evidence. That evidence came from her and her partner.

The respondent's response

14. There was no rule 24 response. Mr Duffy submitted that the decision was one which was open to the judge and was adequately reasoned. It was clear that the appellant had been inconsistent in her evidence. So far as plausibility was concerned she came from a tribal culture from north Albania. She had a conservative family which believed in chastity and honour. The idea that they would allow her to go to the UK to study did seem implausible. So far as the lack of reasons were concerned the fact was that there was no documentary evidence that the appellant and AI were living together.

Decision

15. The UT should be slow to interfere with findings of credibility made by the First-tier Tribunal. However the appellant's credibility and that of her partner is central to her case. Judge Chana relies on evidence from the hotel in Albania for the finding that AI travelled to Albania on 27 October. However the appellant explained in her witness statement that this was an error. Moreover she produced the Ryanair boarding pass in IA's name showing that he travelled to Podgorica in Montenegro on 27 November 2016 returning on 4 December 2016. The airport is not far from northern Albania.
16. Moreover the appellant produced a letter from the Peace Reconciliation Missionaries of Albania (the commission) dated 3 March 2017 together with a translation which confirmed that AI had appeared in their office on 30 November 2016. It confirmed many of the details of AI's account. He had told them that he was of Kosovan origin living in London. He had met the appellant and they loved one another very much. They were happy to live together. However as soon as she had told her family they disowned her as their daughter. The appellant had become depressed and for that reason he travelled to meet the family. He had asked the commission for help. They had made contact with the appellant's father on AI's behalf but on 2 December had got a very curt answer. The father told them that the family had sent their daughter to England to study but she had betrayed them by entering a relationship with a foreigner, a thing that in their tradition was categorically unacceptable. Moreover she had caused them another problem; they had promised a family with the same traditions and customs as theirs that as soon as the appellant returned from London she would marry their son. The family had lost face twice because of her. If the

encountered either Al or the appellant they would not be responsible for the consequences. They had done everything for the daughter but she had repaid them in the worst possible manner. The honour of the family stays above everything.

17. Mr Duffy said that there was no documentary evidence that the appellant and Al were living together. That is incorrect. The bundle shows an electricity bill from Eon dated 1 October 2015 in both names as well as two Council Tax bills from the London Borough of Bexley covering the periods from 1 October 2015 to 31 March 2017.
18. Judge Chana's failure to consider the explanation about the hotel dates together with the supporting evidence from the boarding pass is the start of a failure to properly assess the evidence before her. There was evidence that Al had travelled to the region and spent only a few days there; that during his stay he had approached the commission for help; that they approached the appellant's father on Al's behalf; that the father had rejected the approach in curt terms; in doing so he gave reasons which, if accepted corroborated much of the appellant's account. Moreover the father had made a comment which could well be taken as a threat of harm against Al and his daughter.
19. Against that background it is hardly necessary to deal with the appellant's third ground of appeal. Nevertheless I agree with Ms Reid's submission that the parents of a girl from a traditional conservative culture might well consider that they do not require to expressly forbid their daughter to enter into a relationship while studying in England. She may well be expected to know what behaviour was expected of her. Indeed, if the account from the commission is accepted then it gives the context in which the parent's decision to send their daughter to England to study and their expectations of her is set. In **Ibrahim Ali** the Tribunal warned that decision makers must take great care in not allowing their own perceptions and values to influence their judgement (para 3).
20. Finally Judge Chana finds that the appellant has not provided any credible documentary evidence that she is living with Al in his flat. It is of course open to the First-tier Tribunal to reject the evidence that has been provided but the electricity and council tax bills are *prima facie* evidence that they are living together. In these circumstances she should have given reasons for rejecting that evidence.
21. For these reasons I find there is a material error of law and I shall allow the appeal. Since the appeal relates to findings of credibility in respect of both the appellant and Al I shall remit the case to the First-tier Tribunal to be reheard. No findings are preserved.

Notice of Decision

The appeal is allowed and the case remitted to the First-tier Tribunal.

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 10 April 2018

Lord Boyd of Duncansby
Sitting as a Judge of the Upper Tribunal