



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/14017/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Bradford
On 27th March 2018**

**Decision and Reasons
Promulgated
On 11th April 2018**

Before

DEPUTY UPPER TRIBUNAL KELLY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[M T]

(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mrs R Pettersen, Senior Home Office Presenting Officer
For the Respondent: Ms N Ahmad, Counsel instructed by Malik and Malik
Solicitors

DECISION AND DIRECTIONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of Judge K Henderson, promulgated on the 19th June 2017, whereby she allowed the appeal against refusal of [MT]'s Protection Claim. For convenience, I shall refer to the parties in accordance with their status in the First-tier Tribunal. I shall thus refer to [MT] as "the appellant" and to the Secretary of State as "the respondent".
2. The appellant's case may conveniently be summarised as follows.

3. The Appellant hails from a village in northern Albania called [M]. In June 2013 she met a man called [FR] at a friend's birthday party. They began to see one another regularly until [FR] left for Sweden on the [] 2013. They thereafter maintained contact by telephone. On the [] 2014, the Appellant went for a family visit to Italy where her sister and two brothers were living. A month later she went to Sweden where [FR] said he was working for a construction company. He met her at the airport and she went to stay with him at his apartment. Three weeks later, [FR] told her that henceforth she would be working for him as a prostitute. He held her captive, monitored her telephone calls, and assaulted and raped her when she refused to work as a prostitute. He became angry when he discovered that she was pregnant and he threatened to kill her family members if she attempted to escape. She rang one of her brothers in Italy ([D]) whilst [FR] was sleeping and explained her plight. A week later, whilst [FR] was again sleeping, [D] telephoned and informed her that he had found an agent to take her to England. The next day, the Appellant escaped from the apartment and telephoned the number of the agent that [D] had arranged for her and thereafter travelled by lorry to the United Kingdom where she claimed asylum. She gave birth to a boy on the 23rd August 2015. She has not had any further contact with either [FR] or [D] since leaving Sweden. She fears that on return to Albania she will be shunned by her family and society at large because she has given birth to a child outside wedlock, and that her father would seek her out were she to relocate within her country of origin. She is diagnosed as suffering from post-traumatic stress disorder and has been referred to rape counselling by her General Practitioner in the UK.
4. The respondent's case was (and is) that even if the appellant's core account is credible, she could nevertheless reasonably be expected to relocate to a place within Albania (such as Tirana) where the state authorities would provide her with sufficient protection against her father. The judge's conclusion is to be found at paragraph 67 of her decision:

"The appellant has shown that the core of her account is credible and that she has a well-founded fear of persecution on the basis that she is a woman who has been trafficked for the purposes of sexual exploitation. I accept that she faces a real risk [of] serious harm and treatment contrary to Article 3 of the ECHR. Her mental vulnerability, her lack of familial support, her lack of employment experience and the very young age of her child are factors which to me would affect her ability to relocate and to reintegrate. For the reasons I have given I conclude that the Appellant can also show that she meets the requirements of Paragraph 276ADE(1)(vi) as there are very significant obstacles to her integration in Albania."
5. The respondent's grounds argue that the judge made contradictory and therefore irrational findings of fact in reaching that conclusion. It is argued, in particular, that at paragraph 49 of her decision, the judge found that the appellant "had not been straightforward about direct contact with her father or direct threats from him" and yet at paragraph 51 had gone on to find that her claimed fear of being subjected to domestic abuse "perpetrated by parents, siblings and other relatives" was well-founded. At

the hearing, Mrs Pettersen also drew attention to the judge's finding, at paragraph 50, that the appellant had not been straightforward about her claimed lack of current contact with her brother [D] (who had financed her escape from the abusive relationship in Sweden) or with "other relatives in Italy", and yet at paragraph 51 had suggested that it was "unclear how much support he would be willing to give to her should she be returned by Albania". In reply, Ms Ahmad drew my attention to other passages in the decision whereby the judge appeared unconditionally to accept the appellant's claim that she had been (a) threatened by her father, and (b) would not receive support from her family members in either Italy or Albania upon returning to the latter country (paragraphs 57 and 66 for example). However, in my view those passages merely serve to emphasise the general confusion in the judge's reasoning concerning these discrete matters. On one view of the judge's findings, she had disbelieved the appellant in relation to both them. At best, it is unclear whether she accepted the appellant's evidence about them or not. Both matters were clearly critical to the outcome of the appeal.

6. I therefore hold that the judge's reasoning was inadequate. I accordingly set aside her decision as infected by a material error of law.
7. I discussed with the representatives whether it was possible to preserve the judge's findings of fact in relation to the circumstances leading to the appellant travelling to Sweden together with her experiences in and flight from that country. I am persuaded that those findings are not directly tainted by the errors made by Judge Henderson in relation to the threats that the appellant claims to have received from her father and/or the claimed lack of support that would be available to her from other family members on return. I have nevertheless concluded that it would be difficult to express to another judge who may be tasked with re-making the decision as to where the line is to be drawn between those factual findings which are preserved and those which are set aside. I have therefore concluded that the sensible course would be to remit the matter to the First-tier Tribunal where I shall hear it afresh. Although I do not specifically preserve any of Judge Henderson's findings, the parties will have noted those aspects of the appellant's account which I anticipate will be the focus of their evidence and submissions. Should either party wish to submit further evidence, then this must be done not less than five working days before the hearing.

Notice of Decision

8. The appeal is allowed.
9. The decision of the First-tier Tribunal is set aside and the appeal is remitted to be heard afresh by Judge Kelly in the First-tier Tribunal.

Signed

Date: 7th April 2018

Deputy Judge of the Upper Tribunal