



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01059/2019

THE IMMIGRATION ACTS

Heard at Bradford
On 25 June 2019

Decision and Reasons Promulgated
On 28 June 2019

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

BK
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Hashmi, Counsel

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original first Appellant in this determination identified as BK.

Introduction

1. I have maintained the anonymity direction made in the First-tier Tribunal ('FTT') because this decision refers to the appellant's international protection claim. In addition, the appellant is vulnerable for reasons relating to being a victim of trafficking.

Background

2. The appellant is a citizen of Albania and is 22 years old. In a decision dated 22 January 2019, the respondent acknowledged that in a decision dated 8 August 2018, the National Referral Mechanism ('NRM') concluded that the appellant was a victim of trafficking. The respondent applied the low standard of proof applicable and accepted the entirety of the appellant's account of having been kidnapped and forced into prostitution in Belgium.
3. In summary, the appellant left Albania in February 2016 with her husband and travelled to France, Spain and Belgium looking for work. Her husband borrowed 8000 Euros in order to do so. Whilst in Belgium, the husband's debtors asked for their money back and when he could not pay, kidnapped the appellant. The appellant was then forced into prostitution in Belgium from around March / April to July 2016, when it became clear that she was pregnant. She was kept in a room after this and put on a lorry to the UK in September 2016. When the lorry stopped, the appellant escaped. She claimed asylum on 25 January 2017.
4. The appellant has two children: the first was born in October 2016 and is the child of the appellant's husband; the second was born in July 2018 and her father is unknown (but cannot be the appellant's husband's child because she last saw him in April 2016).
5. In his decision letter, the respondent considered the prospective risk of the appellant being re-trafficked, if returned to Albania, by reference to the relevant considerations in TD and AD (Trafficked women) CG [2016] UKUT 00092 (IAC). The respondent concluded that redress could be obtained from the Albanian authorities, who would be able to provide sufficient protection, and in any event the appellant could internally relocate to Tirana. It is convenient to set out the headnote in TD in full at this point.

"Much of the guidance given in AM & BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC) is maintained. Where that guidance has been amended or supplemented by this decision it has been highlighted in bold:

"a) It is not possible to set out a typical profile of trafficked women from Albania: trafficked women come from all areas of the country and from varied social backgrounds.

b) Much of Albanian society is governed by a strict code of honour which not only means that trafficked women would have very considerable difficulty in reintegrating into their home areas on return but also will affect their ability to relocate internally. Those who have children outside marriage are particularly vulnerable. In extreme cases the close relatives of the trafficked woman may refuse to have the trafficked woman's child return with her and could force her to abandon the child.

c) Some women are lured to leave Albania with false promises of relationships or work. Others may seek out traffickers in order to facilitate their departure from Albania and their establishment in prostitution abroad. Although such women cannot be said to have left Albania against their will, where they have fallen under the control of traffickers for the purpose of exploitation there is likely to be considerable violence within the relationships and a lack of freedom: such women are victims of trafficking.

d) In the past few years the Albanian government has made significant efforts to improve its response to trafficking. This includes widening the scope of legislation, publishing the Standard Operating Procedures, implementing an effective National Referral Mechanism, appointing a new Anti-trafficking Co-ordinator, and providing training to law enforcement officials. There is in general a Horvath-standard sufficiency of protection, but it will not be effective in every case. When considering whether or not there is a sufficiency of protection for a victim of trafficking her particular circumstances must be considered.

e) There is now in place a reception and reintegration programme for victims of trafficking. Returning victims of trafficking are able to stay in a shelter on arrival, and in 'heavy cases' may be able to stay there for up to 2 years. During this initial period after return victims of trafficking are supported and protected. Unless the individual has particular vulnerabilities such as physical or mental health issues, this option cannot generally be said to be unreasonable; whether it is must be determined on a case by case basis.

f) Once asked to leave the shelter a victim of trafficking can live on her own. In doing so she will face significant challenges including, but not limited to, stigma, isolation, financial hardship and uncertainty, a sense of physical insecurity and the subjective fear of being found either by their families or former traffickers. Some women will have the capacity to negotiate these challenges without undue hardship. There will however be victims of trafficking with characteristics, such as mental illness or psychological scarring, for whom living alone in

these circumstances would not be reasonable. Whether a particular appellant falls into that category will call for a careful assessment of all the circumstances.

g) Re-trafficking is a reality. Whether that risk exists for an individual claimant will turn in part on the factors that led to the initial trafficking, and on her personal circumstances, including her background, age, and her willingness and ability to seek help from the authorities. For a proportion of victims of trafficking, their situations may mean that they are especially vulnerable to re-trafficking, or being forced into other exploitative situations.

h) Trafficked women from Albania may well be members of a particular social group on that account alone. Whether they are at risk of persecution on account of such membership and whether they will be able to access sufficiency of protection from the authorities will depend upon their individual circumstances including but not limited to the following:

- 1) The social status and economic standing of her family*
- 2) The level of education of the victim of trafficking or her family*
- 3) The victim of trafficking's state of health, particularly her mental health*
- 4) The presence of an illegitimate child*
- 5) The area of origin*
- 6) Age*
- 7) What support network will be available."*

6. The appellant appealed against the respondent's decision to the FTT and in a decision sent on 25 March 2019, FTT Judge Dearden dismissed her appeal on asylum and human rights grounds.

Grounds of appeal

7. The grounds of appeal are not enumerated but focus their attention on two issues:
 - (1) The FTT applied the wrong standard of proof;
 - (2) The FTT failed to apply the country guidance in TD to the relevant (accepted) factual matrix.
8. In a decision dated 23 April 2019 FTT Judge JK Swaney granted permission, observing in particular that the judge failed to address the relevant points contained in TD.

Hearing

9. After hearing from Ms Hashmi briefly on the FTT's failure to apply the TD country guidance, Mrs Pettersen conceded that the decision contains an error of law.
10. Both representatives accepted that the decision needs to be remade but on a single narrow issue of prospective risk on return in the light of the country guidance. Both representatives were content to proceed by way of submissions only. I had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the limited nature and extent of the factual findings required in remaking the decision, and decided, with the agreement of both representatives, that this is an appropriate case to re-make the decision myself, after hearing submissions from both parties.
11. Mrs Pettersen acknowledged that TG should be followed and in all the particular circumstances of the case, the appellant could internally relocate to Tirana on the basis that she would be safely accommodated in a shelter. Mrs Pettersen submitted that although this appellant has some mental health difficulties they are not serious and she would be able to cope together with her children, in a shelter. She submitted that the risk of re-trafficking is low because her previous traffickers would have no incentive to track her down.
12. Ms Hashmi submitted that a shelter would not be adequate for this appellant because she has mental health difficulties and two children, one of whom is illegitimate.
13. At the end of the submissions, I reserved my decision, which I now provide in writing.

Error of law discussion

14. Mrs Pettersen was correct to concede that the FTT's decision contains an error of law and needs to be remade. The FTT purported to apply TD to the accepted facts of the case at [27-28] and [36]. The FTT accepted that the appellant is a vulnerable individual and has an illegitimate child, but found that she could "*either access the support of her family, or alternatively live in a hostel for a relatively short period before living independently with her children in Tirana*".
15. The FTT's first conclusion that the appellant could access the support of her family entirely fails to provide any reasoning for rejecting the appellant's submission that her family will not provide her with any support because she has an illegitimate child. That submission is consistent with the country guidance that those who have children outside marriage are particularly vulnerable and families may force the mother to abandon her child.

16. The FTT's second conclusion that the appellant can safely internally relocate away from her family, in Tirana, is based on the finding that there will be a sufficiency of protection. This in turn is predicated on an assessment that Tirana will be safe for the appellant and her two children "to a practical standard" – see [34]. The standard of proof to be applied to prospective risk is the same as the standard of proof to be applied to past events: it is the lower standard of proof, or 'reasonable degree of likelihood' standard. As AW (sufficiency of protection) Pakistan [2011] UKUT 31(IAC) makes clear, Auld LJ's summary in Bagdanavicius v SSHD [2005] EWCA Civ 1605 at [55] clarifies that the test set out in Horvath v SSHD [2001] 1 AC 489 was intended to deal with the ability of a state to afford protection to the generality of its citizens. It follows that notwithstanding systemic sufficiency of state protection, a claimant may still have a well-founded fear of persecution if the authorities are unlikely to provide the additional protection the particular circumstances reasonably require. The FTT has limited its assessment to the availability of state protection in general and has not provided reasoning for rejecting the submission that this appellant's particular circumstances demand additional protection that the Albanian authorities may not be able to provide, particularly given her past experiences of persecution.
17. The FTT also concluded that the appellant would be assisted by the police and various NGOs and that having an illegitimate child "is a difficulty which could be overcome". This conclusion assumes that in every case involving an illegitimate child, there is sufficient state support that can be overcome. This does not address or engage with the following country guidance: the strict code of honour that can lead to serious consequences for those believed to have transgressed it applies to those who have children outside of marriage and extends beyond their home area.

Re-making the decision

18. In re-making the decision I have considered all the evidence available to me including the appellant's statements and bundle of country background evidence, as well as the CPIN on 'Albania: people trafficking' dated March 2019 ('the 2019 CPIN'). The appellant's account has been accepted and I have therefore focussed upon the appellant's prospective risk in Albania. In doing so I have applied the lower standard of proof.

Risk in home area

19. Mrs Pettersen implicitly accepted that there may be a risk in the appellant's home area because she focused her submissions entirely on internal relocation. For completeness I address the risk in the home area. Having considered and evaluated the documentary evidence relied on by both parties and applying the Horvath (supra) test in respect of the availability of a sufficiency of protection, in the context of the country guidance, I find that, although there is in general a

sufficiency of protection for victims of trafficking, a sufficiency of protection is not available to this particular appellant in her home area.

20. It is accepted that the appellant has been subject to enforced prostitution having been kidnapped by Albanians, when she was living with her husband in Belgium. It is reasonably likely that the circumstances in which she left her husband will be known to her family and her husband's family, and they will assume that she was subjected to prostitution. It will also become obvious within a short space of time that the appellant's second child is illegitimate. This is because it is reasonably likely that the husband will have told the various family members that he has not seen the appellant since she was kidnapped in April 2016. These circumstances are reasonably likely to lead to her family and community to reject her and subject her to repeated taunts and / or violence for reasons relating to a breach of perceived 'honour'.
21. I am persuaded, on the lower standard of proof, having cumulative regard to these factors, that the authorities in the appellant's home area would be unable or unwilling to provide her with a sufficiency of protection against 'honour' based violence from her family.

Internal relocation

22. I must now consider whether it would be unreasonable or unduly harsh to expect this appellant to avail herself of the internal relocation alternative in Tirana. Such an assessment must be holistic and take into account the appellant's particular characteristics. I acknowledge at the outset that it is clear from TD that as a victim of trafficking and a single mother with an illegitimate child and no family to turn to, the appellant is vulnerable and will have difficulties in relocating to Tirana.
23. I must first of all consider whether there will be a sufficiency of protection for this particular appellant in Tirana. The appellant has no family members in Tirana and they have no firm contacts or links to Tirana. It is not reasonably likely that her own family members or husband will be intent on tracking her down in Tirana. Her own statement does not articulate any such fear - quite the opposite, it asserts that the family want nothing to do with her. The situation is therefore quite different to the appellant returning to her home area wherein the family's perceived shame in having the appellant and her illegitimate child in the area, may lead to 'honour' based violence. I do not accept that the appellant is reasonably likely to be at risk from family members in Tirana. In any event, the appellant will be able to access the protection of a shelter at least initially for the reasons I set out below. This will provide her with the confidence and skills to live an independent life away from her family in Tirana.
24. I acknowledge that re-trafficking is a reality for some women, particularly those who are vulnerable. However in this case, the appellant was trafficked in

Belgium and not Albania. In Belgium she was under the control of her husband and living in precarious circumstances. Her circumstances in Tirana will be very different: she has two children, she has benefitted from over two years of support in the UK and will have the support of the shelter and the associated state agencies and NGOs in Tirana, as set out in TD and the 2019 CPIN. Although the appellant has been subjected to past persecution, there are good reasons to consider that such persecution will not be repeated. Ms Hashmi was unable to take me to any evidence in support of the claim that the persons who trafficked the appellant in the past in Belgium, would seek her out or find her in Tirana. In addition, there is no real risk of being re-trafficked by different traffickers, if the appellant is able to access to support and protection provided within a shelter and from state agencies in Tirana.

25. The country guidance in TD makes it clear that returning victims of trafficking are able to stay in a shelter on arrival and for up to two years, unless the individual has particular vulnerabilities such as physical or mental health issues. It is with this guidance in mind, that I invited Ms Hashmi to take me to the evidence to support her submission that the appellant cannot safely or reasonably relocate in Tirana.
26. Ms Hashmi first took me to the evidence regarding this appellant's mental health as contained in the 'Ashiana' report dated 21 February 2019, as updated in a letter dated 21 June 2019. The appellant has been supported by Ashiana since March 2017, and for over two years. I note that although the appellant was very mistrustful she has developed relationships of trust with support workers. She has felt anxious and nervous but her children are protective coping factors. Although the Ashiana report concluded that it would not be emotionally or psychological beneficial for the appellant to return to Albania, no medical evidence has been submitted to support that proposition. Ashiana's updated letter describes providing the appellant and her children with practical weekly support but also describes the appellant as "*sufficiently independent*". In her own statement, the appellant described having had depression (which required medication) and counselling but described herself as being in a "*better place*". I am satisfied that the appellant has no significant ongoing physical or mental health issues.
27. This appellant has had over two years in the UK to build her resilience in the aftermath of a very distressing and traumatic period of enforced prostitution. She has demonstrated that with support she can face significant challenges including stigma, isolation, financial hardship, linguistic barriers and uncertainty. I appreciate that she has not had to worry unduly about being re-trafficked in the UK and this remains a real concern for her if returned to Albania. However, once returned to Albania, the appellant can access a shelter as a recognised former victim of trafficking. Although she has had mental health issues in the past and bears the psychological scars of her past experiences, these are not sufficiently serious to render the option of access a

shelter as unreasonable. In reaching this finding, I have taken into account and applied the guidance in TD at a) to h). In particular:

- (a) There is no typical profile of a trafficked woman, but this appellant has been recognised formally by the UK government as a victim of trafficking. This has involved an extended and disturbing period of enforced prostitution in Belgium.
- (b) It is reasonably likely that because of the close-knit nature of the appellant's home area in Tropoje and given the fact that her parents are not well-educated and likely to adhere to a strict code of honour, that she will be abandoned or face a real risk of violence there. Her family are likely to work out that her second child is illegitimate and she will no longer have their support. However, it is not reasonably likely that they will seek the appellant out, or find her, in Tirana. I note that the strict code of 'honour' that can lead to serious consequences for those believed to have transgressed it applies to those who have children outside of marriage and extends beyond their home area. Although this appellant has an illegitimate child, her own family members will not seek her out and it is difficult to see how this fact will necessarily become known to anyone else in Tirana. When I asked Ms Hashmi to address me on this, she was unable offer any cogent explanation as to how the second child's illegitimacy will become known.
- (c) This appellant became a victim of trafficking in particularly traumatic circumstances as she was kidnapped by unknown individuals whilst in a foreign country she did not know. She has been able to develop her confidence whilst in the UK and is devoted to her two children. It is not reasonably likely that she will be lured to leave Tirana with false promises of relationships or work.
- (d) When considering the sufficiency of protection available to the appellant in in Tirana I must consider all the appellant's particular circumstances.
- (e) The appellant does not have any obvious ongoing significant physical or mental health issues and her and her children will be able to stay in a shelter with her for an initial period, where according to TD (see [101] – [104]), she will be provided with basic security, board, lodging and health care. I invited Ms Hashmi to take me to the evidence to support her submission that the available shelters would be inadequate or unreasonable for this appellant and her children. She referred me to a CPIN on domestic violence, but did not provide me with a copy of this. When I asked her why the information available in the 2019 CPIN was not more relevant to this case, she submitted that they should be read together. I am satisfied that as a formally recognised victim of trafficking, this appellant will be entitled to access a shelter specifically for victims of trafficking. The 2019 CPIN sets out in comprehensive detail the availability and services provided in "*shelters for victims of THB [trafficking in human beings]*" at section 9 and reintegration packages at section 10. Ms

Hashmi did not take me to any evidence calling into question the material summarised in the 2019 CPIN.

- (f) This is an appellant who has faced but substantially overcome significant challenges in the UK without any family support, albeit she has had the consistent support of Ashiana. She has built sufficient resilience to negotiate further challenges initially in the protective circumstances of a shelter and then when living independently with her children in Tirana. Ms Hashmi reminded me that the appellant would only be entitled to the support of a shelter for a maximum of two years, when she submitted, the appellant would be entirely on her own. Ms Hashmi failed to engage in any meaningful manner with the evidence set out in section 10 of the 2019 CPIN: although challenges persist, many victims of trafficking benefit from comprehensive reintegration services and assistance including inter alia, housing, employment / other support, and education.
 - (g) Re-trafficking is a remote possibility for the appellant but not reasonably likely. She now has the anchor of her two children and will have the protection offered by the shelter. This appellant has already received an extended period (over two years) of support in the UK. She has built up her resilience, and is relatively independent albeit with weekly practical support. She has no significant ongoing mental health issues. Having considered the evidence (in particular at [107] to [112]) and guidance in TD, and the information in the 2019 CPIN, I am satisfied that the appellant will be able to reside initially within a shelter and then independently in Tirana, without reaching a point that renders her reasonably likely to be re-trafficked.
 - (h) The appellant's age (22), social status, level of education, economic standing, lack of family support, illegitimate child and home area are risk factors prima facie increasing the likelihood that she will be the victim of re-trafficking. However these need to be balanced against other factors: she has distanced herself from her family, husband and home area; she has two children who have given her hope and confidence for the future; it is not reasonably likely that the second child's illegitimacy will be known in Tirana; she has been formally recognised by the UK as a victim of trafficking and the Albanian authorities will follow suit in order to give her access to protection and support in a shelter and beyond; she has benefitted from an extended period of support in the UK and has evidenced an increase in resilience; she has no ongoing significant physical or mental health issues.
28. Having considered all the relevant evidence holistically and having applied the country guidance in TD, I am satisfied for the reasons set out above that the appellant can safely and reasonably internally relocate to Tirana. Although she is vulnerable by reason of being a victim of trafficking, having an illegitimate child, and with no family support, she would be able to access support in a shelter and beyond. When all the circumstances are considered together, the appellant's relocation will not be unduly harsh.

29. It follows that although I have found that the appellant will be exposed to a real risk of persecution in her home area, she can be reasonably expected to avail herself of the internal relocation alternative, and as such I dismiss her protection claim. Ms Hashmi did not articulate any other basis upon which the appellant's appeal could succeed.

Decision

30. The FTT's decision contains an error of law such that the decision is set aside.
31. I remake the decision by dismissing the appellant's appeal on asylum grounds.

Signed: *UTJ Plimmer*

Ms M. Plimmer

Judge of the Upper Tribunal

Date:

26 June 2019