



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

Appeal Number: PA/01436/2018

THE IMMIGRATION ACTS

**Heard at Field House
On May 28, 2019**

**Decision & Reasons Promulgated
On June 12, 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MS Z H
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Radford, Counsel, instructed by JD Spicer Zeb Solicitors
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

The appellant is an Albanian national and is now twenty-nine years of age. On 15 April 2015 she entered the United Kingdom clandestinely and claimed asylum on 14 December 2015. The respondent refused her application on 19 January 2018 and on 30 January 2018, the appellant appealed this decision under section 82(1) of the Nationality, Immigration and Asylum Act 2002.

Her appeal came before Judge of the First-tier Tribunal Hembrough (hereinafter called the Judge) who in a decision promulgated on 23 January 2019 dismissed the appellant's appeal. The appellant has appealed that decision and Upper

Tribunal Judge McGeachy gave permission to appeal on 3 May 2019 finding it arguable the Judge had made unclear findings.

The respondent filed a Rule 24 response dated 15 May 2019 opposing the application. The response argued that the Judge provided comprehensive and sustainable reasons to support his findings.

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 his 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.

SUBMISSIONS ON MATERIAL ERROR

Ms Radford adopted the grounds of appeal and submitted the Judge had erred in law. It had been accepted that the appellant's boyfriend had forced the appellant into prostitution within Albania and the evidence presented to the Judge was that she was taken to Kosovo where she was forced to continue working as a prostitute before she escaped and then returned to Albania. She had married and they had tried to enter the United Kingdom unlawfully but were returned to Albania. The appellant told her husband what had happened to her in Albania and Kosovo and he abandoned her. She chose to return to the United Kingdom and had a brief relationship with a male here which led to her becoming pregnant and giving birth to a child outside of marriage.

Ms Radford submitted the Judge had failed to make clear findings. For example, at paragraph 73 of her decision the Judge accepted it was possible the appellant had been trafficked into Kosovo and that her PTSD was due to this and breakdown of her relationship. She submitted the Judge did not make it clear whether she accepted the appellant had been trafficked from Tirana into Kosovo or whether she accepted the appellant had been trafficked to Albania from Kosovo and if not, why not. The Judge's use of the word "Reservations" was the wrong test.

She further submitted that the Judge's findings in paragraph 76 were confusing because it conflicted with her later findings in paragraph 84 where she found the appellant may be able to access family support.

Finally, the standard of proof applied in paragraph 83 because the Judge should have considered whether there was no reasonable likelihood of her account being credible.

Mr Tarlow opposed the application and submitted the findings made by the Judge had been open to her and he invited the Tribunal not to interfere with the decision. The Judge had applied the correct standard of proof in paragraph 83 of her decision and when considering the availability of support in Albania he

argued that even if she could not turn to her family, she had friends in Albania to whom she could turn.

Ms Radford argued that as the appellant now had an illegitimate child she would face a stigma from both family and friends and she referred the Tribunal to what the Upper Tribunal had said in TD and AD (Trafficked Women) CG [2016] UKUT 00092 (IAC) and she submitted that family support was important according to the Tribunal. The expert evidence should have been given more weight and more consideration should have been given to the risk of prosecution and the monies available to her.

FINDINGS

The appellant's claim for asylum has been rejected and Ms Radford has submitted that the Judge's approach to aspects of the evidence disclosed an error in law.

The appellant's claim was she obtained a teaching degree in Albania but was unable to secure employment. In July 2013 she met LH and they began a relationship and she left home to be with him in Tirana. In October 2013 they travelled on false documents, obtained by LH, to Germany but were refused entry. They returned to Tirana and she claimed that LH forced her into prostitution, and this continued in Tirana until she was taken to Kosovo. She was forced to work in a brothel until she was able to get away. She returned to Albania but felt unable to return to her family because of the dishonour she had brought to the family. She stayed with a friend and although she did receive telephone threats they eventually ceased.

The appellant then stated she met her husband in December 2014 and they married in January 2015. They travelled to Greece, at her instigation, and her husband bought false papers with the aim to travel to the United Kingdom. The appellant entered this country with false documents on 29 March 2015, but they were refused entry and returned to Spain. She went back to Albania and on 9 April 2015 she received a threatening call. She told her husband about her past and he told her he wanted nothing more to do with her. She clandestinely entered this country in April 2015 having previously been refused entry by the authorities on 29 March 2015. It was not disputed that she and her husband had tried to enter on false documents having flown there from Spain. She subsequently claimed asylum on 12 January 2016 having registered her claim on 14 December 2015. The final aspect of her claim is that she met a male called Chris and after a brief relationship with him, she claimed she was expecting his child and she subsequently gave birth on 21 February 2016. She fears that were she returned to Albania she would suffer persecution from LH and his cohorts and would be forced back into prostitution. She had no family to turn to and the police could not provide the appropriate protection.

The Judge considered her account and took into account medical evidence provided by Professor Katona and treated the appellant as a vulnerable witness.

Ms Radford represented the appellant in the First-tier Tribunal and argued that the Judge's approach to the evidence is flawed. Mr Tarlow opposed this application arguing that all the findings made were open to the Judge.

The Judge made it clear that allowances were made over the appellant being a vulnerable witness and adverse findings about what happened in Tirana were made by the Judge in paragraphs 43 and 44 of the decision. The Judge was not satisfied her account of travelling back from Kosovo to Albania was credible and gave reasons for this in paragraph 46 of the decision and her claims about what happened when she was staying with her friend were also found to lack credibility. The Judge considered her immigration history including the use of false documents and the failure to claim asylum at the earliest opportunity. All those findings are well-reasoned and are open to the Judge.

Thereafter the Judge considered the timeline and account provided in her asylum interview and initial witness statement and noted that this differed from the account she later provided in a witness statement dated 15 October 2018 but noted the reason for the different accounts was the appellant was weak with dates and because of her mental state.

The Judge considered this explanation against the background of the medical report provided by Professor Katona and having considered all the evidence made a number of findings namely:

She was trafficked into Kosovo.

Claims of threats from LH and his cohorts were rejected.

She was of no interest to anyone in Albania after November 2013 and she would not be of interest to anyone in Albania after such a passage of time.

She was married in January 2015 and she did not tell him about her past. When she told him, he did not take the news well and this led to the breakdown in her relationship and led her to want to leave Albania.

The Judge was not satisfied she fell pregnant to a male in the United Kingdom and finds it is possible she was already pregnant before she came to this country.

She was not estranged from her family.

Ms Radford has challenged the approach of the Judge in paragraph 73 but this paragraph cannot be viewed in isolation to the remainder of the decision. The Judge was aware of the appellant's claim and appeared to accept that she had been trafficked within Albania but was uncertain about her being trafficked to Kosovo. Bearing in mind any return would be to Albania and the Judge accepted she had been internally trafficked in Albania, the question the Judge had to consider was whether she would be at risk of being forced back into prostitution or re-trafficked again in Albania. The Judge's earlier findings and her finding at paragraph 74 make it clear that the Judge was not persuaded she would face a risk in Albania from LH or his cohorts. Based on the reasons given and the findings made, this was a finding open to the Judge.

The Judge did not stop there as she then applied the case law of TD and AD from paragraph 75 onwards. The Judge considered the problems facing the appellant and her child including the information contained in the CPIN. The Judge was not satisfied she had fallen out with her family as claimed and further found she would be able to relocate.

This was an appeal where the Judge carefully considered all the evidence and repeatedly had in mind not only the expert evidence but also case law and country evidence.

The Judge accepted she had been trafficked but concluded her circumstances had changed and there was support from either family or friends.

The findings reached were open to the Judge and I reject the argument the wrong standard of proof was applied.


Contrary to the arguments advanced by Ms Radford I do not find any error in law.

Decision

I find no error in law and I uphold the original decision of Judge of the First-tier Tribunal Hembrough.

Signed

Date 6 June 2019



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT **FEE AWARD**

No fee award is made as the appeal was dismissed.

Signed

Date 4 June 2019



Deputy Upper Tribunal Judge Alis