



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

Appeal Number: PA/02397/2018

THE IMMIGRATION ACTS

Heard at Field House

On 14 January 2019

**Decision & Reasons
Promulgated**

On 14 February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

**AL
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Iengar, instructed by SMA Solicitors

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, against a decision of Judge of the First-tier Tribunal Fowell who, in a determination promulgated on 25 July 2018, dismissed her appeal against a decision of the Secretary of State made on 1 February 2018, to refuse to grant asylum.
2. The appellant, an Albanian citizen, arrived in Britain on 2 December 2014 and claimed asylum the following day. She said that she had married her husband, K, in 2012 without the consent of her parents. K had borrowed money from a friend called L. While K was out of the country L asked her

for repayment and offered her a job in his coffee shop so that she could earn the money to repay the loan. In April 2014 he had spiked her drink and thereafter raped her and took her to a building where he told her she would have to work as a prostitute. After four days she managed to escape through an open window. She met a woman, M, who called K to tell him what had happened and K then disowned her. She stayed with M for eight or nine months, realising after some time that she was pregnant. M said she could no longer look after her and M's son-in-law arranged for her to leave Albania and come to Britain. Her daughter was born in January 2015. The appellant was unsure who the father of the child was. It was the appellant's claim that she would be re-trafficked or killed by L and his group if she returned.

3. The Secretary of State, who took into account a Conclusive Grounds Consideration Minute by a Competent Authority caseworker which found that the appellant was not a victim of trafficking, and other documents provided, considered that the appellant's claim was not credible and she did not have a well-founded fear of persecution on return to Albania.
4. The judge heard evidence from the appellant and considered background documentation including the details set out in the letter of refusal. He considered that the appellant was a victim of trafficking but that if she were returned to Albania she would have the support of her family and would therefore not face persecution on return.
5. The grounds of appeal argued that the judge having found that she was a victim of trafficking should have found that there was a real risk that she would be re-trafficked on return and therefore face persecution and that therefore his decision was illogical.
6. This is an unusual decision because it was not, as Ms Iengar accepted at the hearing before me, the case that the appellant was claiming that she was a victim of trafficking. She had not claimed that she had been brought to Britain by traffickers. What she claimed was that she feared L and his friends who would ill-treat her on return and might then traffic her. The determination is unusual in that the judge made a finding that the appellant was a victim of trafficking despite the fact that that was not what she had claimed. Indeed, in his first sentence the judge states:-

"The fact of arriving in Croydon heavily pregnant usually indicates that the person has in fact been trafficked to the UK and released when heavily pregnant, but not only does Ms L deny that, there has been a Conclusive Grounds decision under the National Referral Mechanism, to the effect she is not a victim of trafficking".

I consider that there is nothing to back up the assertion that a heavily pregnant woman arriving in Croydon is likely to have been trafficked to the UK and released when heavily pregnant.

7. The judge in the second paragraph goes on to set out quite correctly the appellant's claim and why it was not accepted that the appellant would face persecution on return. He states in paragraph 6:-

"According to the Directive, the essential test is whether Ms L has a well-founded fear of persecution if returned to **Error! Reference source not found** by reason of her membership of a particular social group, i.e. as a victim of trafficking,.." (*sic*)

The judge went on to state that he was entitled to depart from the conclusions reached in the National Referral Mechanism and then set out the head note in the country guidance case of **TD and AD (Trafficked women) CG [2016] UKUT 00092 (IAC)**.

8. Having referred to further documentary evidence and oral evidence from the appellant, and noted the submissions made, the judge set out his conclusions in paragraph 33 onwards. He stated that he does not accept the Conclusive Grounds decision stating that he could not accept that as alleged by the respondent who had considered the evidence from the appellant's passport, that the appellant had travelled in and out of Britain, making numerous journeys in Europe after making the claim to asylum. He then also stated that he did not accept the terms of a letter from Sandwell Women's Aid who were supporting the appellant's claim and said that all this meant that he was entitled to reconsider the issue of trafficking. In effect, he went on to conclude that the appellant had been trafficked although he did not state in terms how or where she had been trafficked. He also stated that he did not accept the appellant's claim that a woman she had met had privately funded her legal representation suggesting that again was an indicator that she had been trafficked to Britain and remained in contact with those who had trafficked her. He stated that much of the appellant's story strained credibility, before making findings of fact which were that the appellant was a woman of 30 from Tirana where she had studied at university for four years, that she remained in contact with her family there and that her mother was aware of her asylum application and had taken steps to help her with her appeal. The judge then found that she was not at risk from her own family and that "she arrived in the UK on an unknown date, having one way or another fallen under the control of traffickers". He then went on to say that being a victim of trafficking was not sufficient as there would need to be a risk of persecution. He referred to the issue of past persecution and stated that, as emphasised by the relevant guidance case, re-trafficking was a reality but he stated that she would not be returned as a lone woman or reliant on shelters and that there would be family support for her and therefore he considered that it was unlikely that she would face a real risk on return. He therefore dismissed her appeal.
9. The grounds of appeal on which Ms Iengar relied argued that as the judge had found that the appellant was a victim of trafficking and that the Conclusive Grounds decision was perverse, and the fact that the appellant remained in contact with her traffickers - although he was silent as to how the appellant was trafficked and who her traffickers were - the judge had

erred by not explaining “in clear and brief terms” how the appellant came to be trafficked and whom she identified as possible traffickers, although he had said that he did not believe the appellant’s actual account. However, the judge had said that re-trafficking was a reality and if that was his belief then he had erred in not allowing the appeal. The grounds also seemed to argue that the judge had erred in his consideration of the medical evidence produced and had not taken that into account when assessing the return of the appellant to Albania.

10. Mr Bramble accepted that the lack of a coherent narrative in the determination amounted to an error of law although he stated that the reality was the judge did not believe the appellant’s story as it was put forward and therefore was entitled to find that she could be returned without fear of persecution.

Discussion

11. I consider there are material errors of law in the determination. The reality that the judge did not make clear findings on the facts as put forward by the appellant and therefore there is no clear conclusions thereon as to whether or not they would mean that she would face persecution in the future. Moreover, and somewhat eccentrically, he appears to decide that the appellant had been trafficked, despite the fact that that was not what she claimed, and he does not say how or in what way or by whom or when he believed she was trafficked, let alone had he any basis for finding that she must still be in touch with her traffickers. Much of the determination is conjecture or speculation on facts on which the appellant has not based her claim. The appellant is entitled to a determination in which clear findings of fact are made on her claim as made by her, and as it stands that has not been done. In these circumstances and indeed with the agreement of both representatives I consider that the decision of the First-tier Judge does contain clear errors of law and that it is appropriate that the appeal be remitted to the First-tier for a hearing de novo.

Decision

The determination of the Judge in the First-tier is set aside for error of law and the appeal is remitted to a fresh hearing in Birmingham.

Directions

1. The appeal will proceed to a hearing afresh in the First- tier on all issues.
2. Hearing Centre: Birmingham. Time estimate 3 hours.
3. The appellant to state whether or not she requires and Albanian interpreter.

4. The appellant's representative to file a skeleton argument cross referenced to a paginated bundle of documents which must include all relevant documents including the Conclusive grounds report, the report from Sandwell Women's Aid and the Psychological assessment and other background documentation at least 21 days before the hearing.

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 her or any member of her 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: 29 January 2019

Deputy Upper Tribunal Judge McGeachy