



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

Appeal Number: PA/03541/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15 April 2019**

**Decision & Reasons Promulgated  
On 25 April 2019**

Before:

UPPER TRIBUNAL JUDGE GILL

Between

M D  
(ANONYMITY ORDER MADE)

Appellant

And

The Secretary of State for the Home Department

Respondent

**Anonymity**

**I make an order under r.14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the original appellant. No report of these proceedings shall directly or indirectly identify her. This direction applies to both the appellant and to the respondent and all other persons. Failure to comply with this direction could lead to contempt of court proceedings.**

**I make this order because the appellant alleges that she was trafficked into prostitution in Albania.**

**Representation:**

**For the appellant: Ms E Sanders, of Counsel, instructed by Oliver & Hasani Solicitors.**

**For the respondent: Mr E Tufan, Senior Home Office Presenting Officer**

**DECISION AND REASONS**

1. The appellant, a national of Albania born on 26 June 1990, appeals against the decision of Judge of the First-tier Tribunal Graham who, in a decision promulgated on 30 August 2018 following a hearing on 20 July 2018, dismissed her appeal against a decision of the respondent dated 24 February 2018 which refused her asylum claim of 25 February 2015. The respondent also refused to grant leave to remain on human rights grounds.
2. The judge made an adverse credibility assessment and rejected the appellant's evidence that she had been forced into prostitution in Albania by a man ("T") and T's associates because she and her husband owed them a debt for arranging a trip to the United Kingdom (which, in the event, did not achieve the agreed aim) in 2014 following their decision to emigrate for economic reasons to the United Kingdom or the USA. The judge found that there were material internal inconsistencies in the appellant's accounts which she considered had not been satisfactorily explained. The judge also relied upon a letter dated 4 March 2017 from the British High Commission in Tirana (Annex E of the respondent's bundle) which stated that checks made revealed that there was no record of the appellant or her daughter returning to Albania after they left Albania on 26 April 2014.
3. The judge dismissed the appellant's asylum claim, humanitarian protection claim and related claim under Article 3 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).
4. The judge also dismissed the appellant's claim under Article 3 on the basis of her mental health issues as well as her Article 8 claim.
5. Permission to appeal was granted by Judge of the First-tier Tribunal Shimmin. The grounds do not challenge the judge's decision to dismiss the appellant's Article 3 claim based on her mental health issues. They challenge the judge's decision to dismiss the appellant's asylum claim, humanitarian protection claim and related Article 3 claim.
6. Ground 1 includes (at para 2. (iv)(e) of the grounds) a challenge to the judge's decision on the appellant's Article 8 claim. I refer to this as Ground 1b.
7. The grounds, in summary, are as follows:
  - (i) (Ground 1a) The judge erred in law in making her adverse credibility assessment by failing to take into account an expert country report by Antonia Young (ground 1).
  - (ii) (Ground 1b) Ms Young's report was also material because Ms Young analysed the best interests of the appellant's children and the difficulties that the appellant would face in finding employment.
  - (iii) (Ground 2) In the alternative, the judge's failure to take into account Ms Young's report meant that she failed to give adequate reasons for dismissing the appeal.
  - (iv) (Ground 3) The judge's refusal of the appellant's adjournment request in order to obtain a trafficking report meant that the appellant had not had a fair hearing.
  - (v) (Ground 4) In the alternative, the judge failed to provide reasons for refusing the adjournment request.
  - (vi) (Ground 5) The judge's approach was irrational and/or unreasonable for the reasons given in grounds 1-4.

Basis of asylum claim

8. This summary is taken from paras 11-22 of the judge's decision.
9. The appellant and her husband agreed to pay T a sum of money to arrange travel for them and their daughter to London pursuant to their decision to emigrate for economic reasons (on one account, the husband decided to stay in Albania due to lack of funds). The appellant, her daughter and (on one account) her husband left Albania on their own passports in April or June or July 2014 and travelled to Italy where they were given false passports. The appellant's false passport was detected by Italian security at Milan airport as a result of which she was unable to fly to London. After staying in Italy for one week, or alternatively, two weeks in a house provided by T, the appellant and her daughter (and, on one account, her husband) returned to Albania.
10. On 29 July 2014, T and three men came to her home in Albania demanding to be paid €10,000 which they were owed for arranging the unsuccessful trip to Italy. The appellant and her husband were threatened and beaten before being put in separate vehicles. Her husband was hit on the head with a rifle butt and became unconscious. This was the last time she saw him. The appellant was taken to a house in Albania where she was held against her will and forced into prostitution, until January 2015 when she became noticeably pregnant. She was taken to a hospital by T for an abortion. On one account, she was helped to escape whilst in the operating theatre by the male doctor who was preparing her for an abortion. On another account, she was taken to a clinic and helped to escape by a female nurse through the rear of the clinic.
11. After escaping, the appellant returned to her parents' home where she was reunited with her daughter and where she told her father what had happened. There was an inconsistency in the appellant's evidence as to whether a complaint was then made to the police. In her witness statement, the appellant said that her father was physically assaulted by men who told him that they were looking for her. Her father told her he was receiving threatening phone calls. The appellant moved to her in-laws' house with her daughter.
12. Arrangements were made for the appellant and her daughter to leave Albania. They left Albania on 13 February 2015 in the rear of a lorry and changed lorries a number of times before arriving in the United Kingdom on 25 February 2015. She claimed asylum on the same day. Her son was born in the United Kingdom on 24 April 2015.

The judge's decision

13. The judge said that she had treated the appellant as a vulnerable witness in line with the Joint Presidential Guidance Note No 2 of 2010. She considered the expert report of a psychiatrist, Dr Chiedu Obuaya, dated 12 July 2018, which, she noted (at paras 5 and 37 of her decision), stated as follows (paras 30, 53, 61 and 64 of the psychiatric report):
  - “30. It was not possible to reconcile the discrepancies noted in the [refusal letter] (paragraphs 33-44) when they were put to [the appellant]. She stated she was "very stressed" when the asylum interview was conducted and that there may have been problems with the interpreter who was apparently from Kosovo.”

“53. I have not been able to provide a psychiatric explanation for the aforementioned discrepancies in [the appellant’s] past account of her experiences. I am also concerned about the explanation she gave about how she discovered she was pregnant (paragraph 18) which I struggled to follow.”

“61. In my clinical opinion ..., [the appellant] is fit to instruct her solicitors.”

“64. In [the appellant’s] case, there is no apparent disturbance of her mind or brain which impairs her ability to understand and weigh up the relevant information relating to the proceedings, she was, in my clinical opinion, able to communicate her views clearly.”

14. In view of Dr Obuaya's evidence and opinion, the judge stated that she was satisfied that the inconsistencies in the appellant's accounts could not be explained by any mental health condition.

15. The judge then considered the explanation given to Dr Obuaya that the appellant may have had problems at her interview with the interpreter who was from Kosovo. In this regard, the judge said, at para 38 of her decision, as follows:

“38. As regards the explanation given to the expert that the appellant may have had problems with the interpreter who was from Kosovo, I note the appellant has failed to mention interpreter problems in either of her witness statements, as part of the comprehensive further submissions or during her oral evidence when asked to explain inconsistencies. The record of interview states that at the commencement of the interview the appellant accepts that she understood the interpreter. At the end of the interview the appellant states that she has understood all the questions and does not state that there were any interpreter problems during the interview. In these circumstances I have not accepted that any of the inconsistencies are due to interpreter error.”

16. The judge then considered the appellant's explanation, in her oral evidence and in her first statement, that she is uneducated and has a poor memory. The judge did not accept that the appellant was uneducated. She stated, at para 39 of her decision, that, whilst the recollection of dates may be affected by a poor memory, she did not accept that the inconsistency as to whether or not her husband had travelled to Italy with her and her daughter in 2014 can be so easily explained.

17. Having considered the various explanations for the internal inconsistencies, the judge took the inconsistencies into account, explaining why they went against the appellant's credibility.

18. The judge considered (para 45) that the core of the appellant's claim was that she and her husband owed a large sum of money to T for the unsuccessful journey to Italy, following which she returned to Albania, and that, following her return to Albania, she was forced into prostitution by T and his associates who demanded the money that they were owed. She considered that the appellant's evidence, that she had returned to Albania, was undermined by the letter from the British High Commission in Tirana which stated that there was no record of the appellant or her daughter returning to Albania. She considered that the appellant's evidence concerning her method of return to Albania was inconsistent because she said at her interview (question 94) that she and her daughter returned to Albania by plane whereas her evidence in her witness statement, which post-dated the respondent's refusal letter, was that she returned to Albania by ferry and avoided immigration

control upon return to Albania. The judge considered that, as the appellant and her daughter were in possession of genuine Albanian passports, it made no sense for them to avoid border control.

19. The judge also considered that there were other internal inconsistencies in the appellant's accounts which she explained in greater detail in her decision.

20. I now quote paras 39-45 of the judge's decision:

- “39. ... Whilst the recollection of certain dates may be affected by a poor memory, I do not accept the inconsistency as to whether or not her husband travelled to Italy with her and her daughter in 2014 can be so easily explained.
40. Similarly, the appellant's oral evidence that once back in Albania, her father collected her daughter and took her to stay with him for safety cannot be reconciled with her responses in interview (questions 114/115) that she drove her daughter to her parent's house and returned to Tirana because her husband asked her to return. This account of driving her daughter to her parent's house is inconsistent with her evidence that she and her husband were under constant surveillance and unable to leave the house save for food shopping.
41. I am satisfied these are material inconsistencies which serve to undermine the credibility of the appellant's account. In addition I find central parts of the appellant's account to lack plausibility.
42. The appellant claims to have come from a poor family, in addition, her husband needed to go abroad to earn sufficient to support her. In interview she also says (interview questions 11, 18 and 19) that her father was unemployed, her mother worked as a cleaner and her in-laws "did village work" with greenhouses. I have found this to be inconsistent with her account that her father and father-in-law paid an agent to take her and her daughter to the UK. In any event, if her father and father-in-law were able to fund her journey to the UK then I have not found it plausible that they would not have paid [T] to stop the threats to their children's lives.
43. I have considered the appellant's account that she travelled from Albania to Italy legitimately on her genuine Albanian passport yet needed false documents to travel on to either USA or UK which were detected by security at Milan airport. She said she was prevented from boarding the plane yet she was not arrested or detained. I have not found it credible or believable that having been discovered attempting to board an international flight with false documents that she would be allowed to walk free from the airport, especially as she was not an Italian national. I am satisfied it is far more probable that the appellant would have been arrested and questioned as to how she obtained the false document and her intentions in travelling to either the USA or UK.
44. The appellant said in interview she travelled back to Albania by plane. However, information from the British High Commission in Tirana state there is no record of either the appellant or her daughter returning to Albania. In her witness statements which post date the refusal, she gives a very different account of her return trip to Albania. She says she travelled by Ferry and avoided immigration upon return to Albania. Not only is this a material inconsistency, I consider the appellant's claim to have returned to Albania clandestinely unlikely and implausible. The appellant and her daughter were in possession of genuine Albanian passports and would have been able to pass through Albanian border control without incident. Therefore it makes no sense to avoid border control. I am satisfied the

appellant has given this account for the purpose of explaining why there would be no record of her re-entering Albania.

45. Whether or not the appellant re-entered Albania is at the core of her asylum claim as she claims to have been forced into prostitution in Albania. Given I have not found it likely or plausible that having been found with false documents she would not have been detained and questioned, coupled with the inconsistency as to her mode of travel and the implausibility of her claim to have re-entered Albania without going through customs, I am unable to accept that she did return to Albania from Italy as claimed. This means that I do not accept she was in Albania when she claimed to have been trafficked. This goes to the core of her account and consequently, I have dismissed her account entirely.”

21. The judge then said that she rejected the entirety of the appellant's account, at para 46 of her decision, which reads:

“46. I have considered whether the appellant and her children face any risk upon return. Given that I have dismissed her account entirely I have discounted a risk of re- trafficking. The appellant is on good terms with her parents and in-laws therefore she and her children can return to family who can offer the appellant and her children the support needed to reintegrate into Albanian society.”

### Submissions

22. Ms Sanders relied upon the grounds. The principal ground was that the judge had not made any reasoned findings on Ms Young's expert report. The report was relied upon by Counsel for the appellant at the hearing before the judge (Mr James Fraczyk). The report was relevant because credibility should always be assessed against the background evidence which includes expert country evidence. On that basis, Ms Sanders submitted that it could not be said that, if the judge had conducted a proper assessment of the appellant's credibility taking into account the expert report of Ms Young, her findings would have been the same.
23. I asked Ms Sanders to explain how Ms Young's report could have assisted the judge given that the judge found that there were material internal inconsistencies in the appellant's accounts that the judge considered had not been satisfactorily explained.
24. Ms Sanders submitted that, although the internal inconsistencies were relevant, they had to be considered against the background material. The expert report of Ms Young highlighted the incidence of trafficking in Albania.
25. Ms Sanders stated that she did not suggest that Ms Young's report cast light on the internal inconsistencies in the appellant's evidence. She accepted that Ms Young's report did not deal with the internal inconsistencies in the appellant's accounts that had concerned the judge. Nevertheless, she submitted that the report was an extensive report which considered the appellant's evidence in the context of the country conditions and that it was therefore relevant to an assessment of credibility.
26. Mr Tufan submitted that Ms Young had prepared her report on the basis that the appellant had given a credible account. The psychiatrist, Dr Obuaya, had stated, at para 30 of his report, that it was simply not possible to reconcile the discrepancies in the appellant's accounts, that he had not been able to find a psychiatric explanation and that the appellant was able to communicate her views clearly.

27. Mr Tufan reminded me that a central part of the appellant's case was that she had returned to Albania one or two weeks after she was stopped from boarding a plane for London and that she was forced into prostitution by T after she returned to Albania. However, evidence obtained from the British High Commission showed that there was no record of the appellant and her daughter returning to Albania. It was only after this had been mentioned at para 34 of the refusal letter that the appellant had stated in her witness statement that she had returned to Albania by ferry avoiding immigration control.
28. Mr Tufan submitted that the report of Ms Young did not help with the internal inconsistencies in the appellant's accounts. Furthermore, credibility was a matter for the judge. At page 54 of her report, Ms Young opined that the appellant would be placed in a vulnerable situation on return to Albania and that she would need to lead a hidden life to avoid being discovered whether or not she was found credible. Although she expressly stated that her opinion was made whether or not the appellant was found credible, it is clear that her opinion was nonetheless predicated on the appellant's account being credible. At page 56 of her report, Ms Young stated that she considered it plausible for the appellant to fear for her life and that she found the appellant's descriptions of fear of attack from her former traffickers and/or their associates and potential murder objectively justified. Mr Tufan referred me to the criticism of Ms Young's expert evidence in MF (Albania) v SSHD [2014] EWCA Civ 902.
29. In response, Ms Sanders referred me to page 56 of Ms Young's report where she said that the appellant's account was highly consistent with what is known about the situation in Albania.
30. I reserved my decision.

## **Assessment**

### *Ground 1a and ground 2*

31. Mr Tufan referred me to the criticisms of Ms Young's expert evidence in the case of MF (Albania). In her report produced for the instant case, Ms Young states, at page 69, that she has considered the comments made concerning her input in MF (Albania) and that she had sought to be more objective in her assessment of cases since then. She refers to five other (unspecified) cases in which she says her reports were found to be fully valid.
32. It is not necessary for me to consider whether, in her report in the instant case, Ms Young has indeed addressed the comments made in MF (Albania) about her expert evidence in that case. It is evident, in the instant case, that notwithstanding that she states that the appellant is at risk whether or not she is found credible, the reality is that her assessment of the risk facing the appellant is nevertheless predicated on the appellant's account being credible. This much is evident from, for example, the following paragraph on page 54 of her report:
- “54. Whether or not [the appellant] is found to be credible, the fact remains that returning her to Albania, a country in which family members are normally highly inter-dependent, now as a single mother, without the ability to relate to her own and her in-law families (due to the fact that the traffickers are on the watch for her return there), she would be placed in a very vulnerable situation. She would need to lead a hidden life to avoid being discovered by

any of those antagonistic towards her”.

33. More importantly, it is clear from the judge's reasoning that her adverse credibility assessment turned upon the fact that the core of the appellant's case, that she was trafficked into prostitution after she returned to Albania following her unsuccessful attempt to travel to London, was undermined by the following:
- (i) The letter from the British High Commission which showed that checks had revealed that the appellant and her daughter had not returned to Albania.
  - (ii) The appellant had given an inconsistent account about her method of return to Albania.
  - (iii) The appellant's evidence in her witness statement, that she had avoided border control on returning to Albania, was advanced only after para 34 of the refusal letter stated that evidence received from the British High Commission stated that there was no record of the appellant and her daughter returning to Albania after their unsuccessful attempt to travel to London.
  - (iv) The appellant's belated explanation, that she and her daughter had avoided border control on return to Albania, made no sense given that they were in possession of their genuine Albanian passports.
  - (v) There were other internal inconsistencies in the appellant's evidence that undermined her credibility, as the judge explained at paras 39-44 of her decision.
34. There is absolutely nothing in the judge's reasoning which suggests that she considered that a claim by an individual of having been trafficked into prostitution in Albania was not consistent with the country evidence. There is no reason to suppose that the judge was not aware of the country evidence concerning the incidence of trafficking of women in Albania and did not take it into account. At para 26 of her decision, she specifically referred to the country guidance case of TD and AD (Trafficked women) CG [2016] UKUT 00092 (IAC) in summarising the respondent's reasons for refusing the appellant's asylum claim.
35. The difficulty for the appellant is that the judge rejected her evidence that she had been trafficked into prostitution in Albania not because her claim that she had been trafficked into prostitution in Albania was inconsistent with what is known about the objective situation in Albania but because there were material internal inconsistencies and other difficulties in her account, as described at my para 33 above.
36. Accordingly, whilst it would have been preferable if the judge had made some specific reference to the report of Ms Young, I do not accept that, in her assessment of credibility, the judge failed to take into account the fact that trafficking of women into prostitution does occur in Albania.
37. However, even if I am wrong about this, I do not accept that Ms Young's report had any material bearing on the assessment of credibility. Ms Sanders accepted that Ms Young's report did not deal with the matters I have summarised at my para 33 above, nor (it has to be said) could it have done so since such matters are for assessment by a judge, not the country expert.
38. Para 2(iv)(b) and (c) of the grounds contends that the judge failed to take into account the fact that Ms Young had assessed the psychiatric report of Dr Obuaya and noted numerous features of the psychiatric report that were in the appellant's



favour. This ground is utterly hopeless. It was for the judge to assess the psychiatric report, and not Ms Young. There is nothing to indicate that Ms Young has any expertise in assessing psychiatric reports.

39. Para 2(iv)(d) of the grounds states that the failure to consider the report of Ms Young was material because Ms Young had considered sufficiency of protection and internal relocation. This ground simply ignores the fact that the judge rejected the appellant's account that she had been trafficked.
40. I therefore reject ground 1a.
41. Ground 2 does not establish any material error of law in the judge's decision. Contrary to ground 2, the judge did give adequate reasons for rejecting the appellant's evidence that she had been trafficked into prostitution in Albania.
42. Grounds 1b, 3, 4 and 5 were not addressed at the hearing before me. However, as Ms Sanders relied upon the grounds, I shall deal with them.

#### *Grounds 3 and 4*

43. Appellants do not have the right to have an unlimited amount of time to obtain reports. In the instant case, a pre-hearing review set for 19 April 2018 was adjourned in order to allow the appellant time to produce a psychiatric report, a country report and a trafficking report. The appellant was able to obtain the first two reports. It has not been suggested in the grounds that the judge was provided with any explanation for the failure to obtain a trafficking report or any indication of the period of adjournment needed to obtain such a report. I do not accept that the judge failed to consider whether the appeal could be justly determined. This is an experienced judge who no doubt would have had in mind the overriding objective in deciding whether to grant the adjournment request.
44. In any event, I cannot see how a trafficking report (which still has not been produced notwithstanding that nine months have elapsed since the hearing took place before the judge) could have made any material difference given the difficulties in the appellant's accounts, as summarised at para 33 above.
45. On the material before me, it simply has not been shown that the appellant did not have a fair hearing. The credibility of the appellant's evidence turned upon the matters I have summarised at para 33 above. It has not been suggested that she did not have an opportunity to address these in her evidence. It has not been explained how a trafficking report could have assisted the appellant given the judge's assessment of the credibility of her evidence in relation to the matters set out at my para 33 above.
46. I therefore reject grounds 3 and 4.
47. Ground 5 is hopeless, for the reasons I have already given. It added nothing to the appellant's case and should not have been pleaded, in my view.

#### *Ground 1b*

48. This contends that Ms Young's report was also material because Ms Young analysed the best interests of the appellant's children and the difficulties that the appellant would face in finding employment.
49. However, as I have already said, Ms Young's report was predicated on an acceptance of the appellant's credibility. The appellant did not claim that her relationship with her parents and in-laws had broken down. To the contrary, on her evidence, she had a good relationship with them. The only reason that Ms Young offers for the appellant not being able to contact her parents and in-laws is that her traffickers would be on the look-out for her. Given the judge's rejection of the appellant's evidence that she had been trafficked into prostitution, this aspect of Ms Young's report cannot assist her.
50. I therefore reject ground 1b. I draw attention to the fact that no issue has otherwise been taken in the grounds to the judge's assessment of the appellant's Article 8 claim.
51. For all of the reasons given above, I have concluded that the judge did not materially err in law. The appellant's appeal to the Upper Tribunal is therefore dismissed.
52. Finally, I should say that permission to appeal should not have been granted in this case. Given that the judge's assessment of credibility turned upon the matters summarised at my para 33 above, it was obvious that this was not a case in which expert evidence or a trafficking report could have had any material significance.

### **Decision**

Judge of the First-tier Tribunal Graham did not make any material error of law. Accordingly, her decision to dismiss the appellant's appeal against the respondent decision stands.



Upper Tribunal Judge Gill

Date: 21 April 2019