



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

Appeal Number: PA/03795/2018

THE IMMIGRATION ACTS

**Heard at Manchester
On 29th November 2018**

**Decision & Reasons
Promulgated
On 18th January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MISS VJ
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Chakmakjain (Counsel), Lillywhite Williams & Co
For the Respondent: Mr C Bates (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge A J Parker, promulgated on 10th May 2018, following a hearing at Manchester on 20th April 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant was born on [~] 1992, is a national of Albania, and is a female. She appealed against the decision of the Respondent dated 6th March 2018, refusing her claim to asylum and to paragraph 339C of HC 395.
3. The Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.
4. The Appellant's claim is that she left Albania with her boyfriend, who subsequently abandoned her to a trafficker, and that she became a victim of trafficking, and if she were now to return back to Albania, she would be at risk from other traffickers. It is noteworthy that a NRM decision was negative, concluding that the Appellant had not been a victim of trafficking. This decision is not binding on this Tribunal, which has to determine the issue of Appellant's well-founded fear of persecution on the lower standard.

The Judge's Findings

5. The judge noted how the Appellant had left Albania of her own volition, as she was in a genuine relationship with her boyfriend, and they went for a better life, according to the judge, travelling through Italy and Spain, after which they both returned back to Albania, from Italy (paragraph 18). The judge observed that the Appellant had been consistent on the dates that she had visited the various countries. She had also been "open and honest regarding her immigration history" (paragraph 20). It was also noted by the judge how the Appellant had spent with her boyfriend two months in Albania and experienced no problems when they had returned (paragraph 23). She had also travelled out of her country on her own passport by air. She illegally travelled to Belgium where her boyfriend had then left her, and she then became pregnant (paragraph 24).
6. However, the Appellant's claim then was that her boyfriend had "forced her to work as a prostitute and she fell pregnant and then one night they went by car to a forest" and then she managed to escape with two other girls and that "within one hour she boarded a lorry due to go to London with fellow asylum seekers", and the judge did not find this credible, on the basis that the Appellant would not have been able to get a lorry within one hour so quickly (paragraph 25). The judge went on to say that even if the account given by the Appellant was true "this is simply explained by the fact that she had a bad experience in Belgium and this does not create a risk profile in Albania" (paragraph 26). Moreover, it was not credible that the traffickers had allowed the Appellant six months without forcing her into prostitution (see paragraphs 27 and 28).
7. Account was taken by the judge of an expert report by Antonia Young, which had treated the Appellant's account as being credible (paragraph 30). However, the judge was of the conclusion that the Appellant's story

was not plausible and that she had not been trafficked, and would return as a single woman with a child to Albania, because she had left her own country on two occasions voluntarily with her boyfriend, and that the relationship had ended and she had become pregnant (paragraph 32).

8. The appeal was dismissed.

Grounds of Application

9. The grounds of application state that the judge erred for the following reasons. First, at paragraph 25, the judge had stated that, the Appellant's account of being forced to work as a prostitute was not credible, but the Appellant had given detail of this in her interview, her witness statement and in her oral evidence, and this was not referred to in the determination at all. The judge simply states that the account "does not sound credible", and this is not a proper reason upon which to disbelieve the account.
10. Second, the judge had failed to make any reference to the country guidance case in relation to trafficked women from Albania of **TD and AD (Trafficked women) CG [2016] UKUT 00092**. The judge had regarded the Appellant's evidence account of having left Albania with her boyfriend voluntarily as something that damaged her credibility. But if one had given consideration to the country guidance of **TD and AD**, there it had been made clear that:

"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. (See paragraph 119(c)).
11. Third, the judge had failed to consider material evidence. For example, the judge had stated (at paragraph 57) that the Appellant had failed to report her traffickers to the Belgian police after she escaped, but the judge did not take into account the Appellant's explanation in oral evidence that an hour after she escaped the traffickers, she had boarded a lorry in order to leave the area. Any failure to seek out the police and report the matter must be seen in the context of how she had escaped.
12. Fourthly, it was said that the judge's adverse credibility findings could not be sustained, when it was said that the Appellant had been "disowned by her father (at paragraph 38), and yet in the next paragraph it had been stated (at paragraph 39) that there has been "no breach of the family's honour".
13. Finally, what is perhaps most important in this appeal, was the fact that the judge referred to the Appellant returning back to Albania as a single mother, without family support, and yet no consideration was given to her vulnerability in this respect, if she were to be returning alone with a child.

Submissions

14. At the hearing before me on 29th November 2018, Mr Chakmakjain, relied upon the grounds of application, and set out to explain them before the Tribunal. He submitted that the judge's conclusions as to the Appellant's lack of credibility were not sustainable. The judge had failed to refer to the country guidance case of **TD and AD**. Finally, the judge failed to take into account the fact that the Appellant was returning back as a single mother, disowned by her family, without any other support, and in a country that was small enough to raise risks to her.
15. For his part, Mr Bates submitted that he would have to accept that the judge's failure to make any reference whatsoever to the country guidance case of **TD and AD (Trafficked women) CG [2016] UKUT 00092**, was remis of the judge, particularly given that the case that the judge does refer to, is one that deals with lesbians, and not with those who have been trafficked (see paragraph 42). He would also have to accept that the judge had not considered the Appellant's position as a single mother, estranged from her family, without visible means of support, who was returning back to Albania now. Nevertheless, Mr Bates submitted that the credibility findings that had been made should stand intact. The judge did rightly not find the Appellant to be credible, given that the Appellant had not been put to work as a prostitute for six months by her traffickers when she left Albania. Also, the judge rightly did not find the Appellant credible when she gave details of how she escaped, and how she managed to find a lorry within an hour of escaping to enable her to get away.
16. In reply, Mr Chakmakjain, submitted that the judge's errors were sufficient for the decision to be set aside. For example, she had recognised that "her father has disowned her and has no contact" (paragraph 38). Yet, this was immediately contradicted by the judge when she noted that "she returns a single mother and there has been no breach of the family's honour" (paragraph 39). Moreover, her case was not that she had been trafficked right from the beginning from Albania. Her case was that she had left with her boyfriend for another life elsewhere, and it was only when in Belgium the boyfriend fell on hard times and could not find work, that she was forced into prostitution, and this was recognised as a clear possibility in the country guidance case of **TD and AD**, and one which the judge misunderstands. This also explained why the Appellant was not put to work immediately as a prostitute.

Error of Law

17. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007), such that I should set aside the decision and remake the decision. My reasons are as follows.

18. First, this is a case where the judge fails to apply the country guidance case of **TD and AD (Trafficked women) CG [2016] UKUT 00092**. The case is important, because it expressly recognises that “some women are lured to leave Albania with false promises of relationships or work” (paragraph 119(c)). The Appellant’s position was presented as such. Her boyfriend took her away, and it was only subsequently that she was forced into prostitution in Belgium.
19. Second, it is implicitly accepted that the Appellant may well have been forced to work as a prostitute. However, the recognition of this state of affairs is not properly brought out. What the judge states is that, “I find that even if this was true this is simply explained by the fact that she had a bad experience in Belgium and this does not create a risk profile in Albania” (paragraph 26). If the judge was prepared to accept that the Appellant had been forced to work as a prostitute, this could not be put down to as being just “a bad experience”, and if this was the case, then it does not follow that “this does not create a risk profile in Albania”, when plainly the evidence suggests that it does.
20. Third, the judge recognised, as a matter of obvious fact, that the Appellant would be returning as a single woman with a child, disowned by her own family, and without any other support, and yet the viability of her return, and as to whether this would be “unduly harsh” was not something that was expressly considered by the judge.
21. In fact, the factual assessment was confused towards the end of the determination, when the judge concluded that the Appellant could indeed return because “there has been no breach of the family’s honour” (paragraph 39), which did not follow from the recognition in the previous paragraph that “her father has disowned her” (paragraph 38).
22. I have remade the decision on the basis of the findings of the original judge, the evidence before her, and the submissions that I have heard today. I am allowing this appeal only to the extent that it is remitted back to the First-tier Tribunal to be determined by a judge other than Judge Brookfield.

Notice of Decision

23. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal to be determined by a judge other than Judge Brookfield pursuant to Practice Statement 7.2(b) because the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be remade is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal.
24. An anonymity order is made.

25. This appeal is allowed.

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 their 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

Deputy Upper Tribunal Judge Juss

10th January 2019