



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08713/2018

THE IMMIGRATION ACTS

Heard at Field House
On 17 January 2019

Decision & Reasons Promulgated
On 06 February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Hawkin, Counsel instructed by Oaks Solicitors

For the Respondent: Ms K Pal, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Albania. She was born on [~] 1980. She arrived in the United Kingdom on 29 July 2012 and made an asylum application on 24 June 2013. This claim was certified as unfounded and refused but following further submissions and a judicial review, a decision was made on 27 June 2018 refusing her leave to remain but with the right of appeal.
2. The basis of the Appellant's claim is that she feared return to Albania as a single woman with illegitimate children, that there is a lack of sufficiency of protection and

she would not safely be able to internally relocate. The reason that she had fled Albania is that she did not want to marry a person of her family's choosing as a result of which she was ill-treated and beaten by her family. She then escaped and fled to the United Kingdom in order to be reunited with an Albanian national whom she had met in Albania and who had come to the United Kingdom. She had since given birth to two children, a son on 15 May 2013 and a daughter on 5 January 2015, and she feared return for herself and her children. She stated that she had subsequently split up with her partner.

3. The Appellant appealed against the decision. Her appeal came before Judge M A Khan for hearing on 26 October 2018. In a decision and reasons promulgated on 9 November 2018, the judge dismissed the appeal, finding that the Appellant's evidence was not credible or consistent.
4. Permission to appeal was sought in time on the basis that the judge had materially erred:
 - (1) in entirely overlooking the content of the expert report of Antonia Young and thus failed to consider credibility in the round and that he had essentially rejected the expert report on the basis of his previous negative credibility finding, which was an erroneous approach;
 - (2) in failing to address at all the issues of sufficiency of protection and internal relocation;
 - (3) in failing entirely to consider paragraph 276ADE(1)(vi) of the Rules and whether there would be very significant obstacles to integration, given that both children were born in the UK and have never been to Albania and the fact the children were illegitimate in light of the evidence that this was a sort of stigmatisation and a risk was clearly material.
5. Permission to appeal was granted by First-tier Tribunal Judge Andrew in the following terms on 5 December 2018:

"I am satisfied there are arguable errors of law in the decision in that the judge did not consider the expert report in the round when making his credibility findings. Further, the judge did not address the issues of sufficiency of protection and internal flight. Further, he failed to consider paragraph 276ADE(1)(vi) of the Rules".
6. The Respondent submitted a Rule 24 response dated 2 January 2019 which provides:

"The Respondent submits the grounds of appeal are a disagreement. It was the role of the First-tier Tribunal to consider the Appellant's credibility and not that of the expert. This Appellant was not a claimed victim of trafficking, she had come to the UK to join her then partner. The First-tier Tribunal gave clear and cogent reasons for not accepting the Appellant's account of events in Albania and subsequently".

Hearing

7. Mr Hawkin, on behalf of the Appellant, sought to rely on the grounds of appeal. He submitted the judge had rejected the Appellant's credibility without considering the expert evidence and this was clear from [45] where the judge held as follows:

"The Appellant has provided an expert report by Antonia Young. There is no issue with regard to the expert's evidence and her qualifications, however this report has been prepared on the information provided by the Appellant. Her evidence seriously damages the Appellant's credibility and that of her claim. In the circumstances I find that the expert report is of limited assistance to the Tribunal in this matter".

8. Mr Hawkin drew attention to the specific findings by the expert as to the plausibility of the Appellant's individual account at [7.2] to [7.4], pages 35 to 36, and page 41 at [8.2.] He stated that the report is set out in the Respondent's bundle and section 7 at B18 is specifically relevant.
9. Whilst the judge did not accept the credibility of the Appellant's claim in respect of the evidence about her cousin and contact with him in the United Kingdom, even if the judge was correct that there was inconsistency in the Appellant's account, Mr Hawkin submitted this did not go to the heart of the case. As the Appellant set out in her interview, she had been locked in the family home for ten days, beaten with a wet rope and after agreeing to the marriage with her ex-fiancé and having escaped, she was told when she contacted her mother that if she returned her head would be cut off. He submitted that this was a very serious set of facts.
10. Mr Hawkin further submitted the judge had failed to give reasons for rejecting the Appellant's account of having split up from her partner, finding at [37]:

"The Appellant's daughter was born on 5 January 2015, they both went to register her birth together, although in the interview, she stated that she called him to attend the registrar I find that they were and are still living in a relationship. Mr N himself has a long undesirable immigration history going back to 2001, having claimed asylum, which was refused, in 2009 deported back to Albania after a criminal conviction but found his way back to the UK. He is still in this country, lurking in the background of the Appellant's life and her claim. I do not find the Appellant's evidence that Mr N did not tell her anything about his status during the time they spent together as credible or consistent".

Mr Hawkin submitted there was no evidential basis for finding "he was lurking in the background" and this was pure speculation. The judge had, he submitted, failed to give any or adequate reasons for his findings in this respect.

11. Mr Hawkin further submitted that the judge had wholly failed to consider paragraph 276ADE(vi) of the Rules and this was a fundamental error of law given that any Article 8 consideration must begin with the Rules.

12. Submissions were made about the Appellant's two children and herself, and in particular the position of illegitimate children in Albania. As is set out in the grounds of appeal, it is apparent that the judge did not make findings on sufficiency of protection or internal relocation on the basis that he had rejected the credibility of the Appellant's account. However, that was not sufficient.
13. In her submissions, Ms Pal submitted that the judge properly made findings of fact. At [37] he gave reasons as to why he found the Appellant and her partner were still together, because they both went to register their daughter's birth. The judge also found the Appellant was not credible in terms of her fear of her family and her ex-fiancé at [39] and [42] which provide as follows:
 39. *The Appellant states that her family will be able to find her anywhere in Albania as it is a small country and her brother is a taxi driver. As I do not accept the Appellant's claim that she is in fear of her family or her ex-fiancé, I do not accept that she cannot live in Albania ...*
 42. *I do not accept the Appellant's evidence that she fled Albania in fear of her life from her family and the ex-fiancé. I do not accept her evidence that she was locked up by her family after she told them of her relationship with Mr N. I find that the Appellant has made up whole of her story about the fear of her family and her ex-fiancé in order to secure her claim in this country".*
14. Ms Pal submitted that the judge had to consider the Appellant's credibility and make findings in respect of the evidence. She submitted it was not the role of the expert to assess whether the Appellant was credible or not. The judge had properly taken into account the report of Antonia Young but nevertheless found the Appellant was not credible in respect of her claim and that she did not qualify for asylum. Having found the Appellant not to be credible, the judge was not then required to go on to make findings as to sufficiency of protection and internal relocation.
15. Ms Pal submitted that the judge had, from [49] onwards considered Article 8 and had considered the children's private life at [55], finding that this could continue with their mother in Albania and that they were not qualifying children. She submitted there was no material error of law in the judge's assessment of the facts and conclusions in respect of both asylum and Article 8.
16. In reply, Mr Hawkin submitted that whilst the judge may have looked at Article 8, he did not consider paragraph 276ADE(1)(vi) as to whether or not there will be significant obstacles to integration. This is a different test to whether or not the children have lived in the UK for seven years and it was incumbent upon the judge to do that, whether or not the judge found the Appellant to be credible. This is essentially a freestanding point.
17. Mr Hawkin accepted the judge had made adverse credibility findings but submitted that he had done this as a result of an incorrect approach in failing to assess credibility in light of the expert and country evidence. The judge had further failed to give reasons or explain himself clearly at all and that overall given the serious

nature of the Appellant's account and the fact it was an asylum appeal it can clearly be said there was a lack of anxious scrutiny.

Findings and Reasons

18. I find material errors of law in the decision of First-tier Tribunal Judge M A Khan. Firstly, in relation to the assessment of credibility, I find that ground 1 of the grounds of appeal has merit. The judge addressed the issue of the expert's report at [45]. However, his reasoning for failing to consider the Appellant's credibility in light of that report is entirely unclear. At [45] (op cit) he found "*Her evidence seriously damages the Appellant's credibility and that of her claim*". It is unclear whether when referring to "her" the judge is referring to the expert, Ms Antonia Young, or the Appellant herself and why this is, absent any particularisation. I further find that the judge erroneously failed to conduct his credibility assessment in light of the evidence set out in the expert report, cf Mibanga [2005] EWCA 367 and that he failed to give proper or adequate reasons for finding that the report was only of "limited assistance" to the Tribunal, so that it was possible to ascertain which aspects of the report he accepted, which he rejected and the reasons for that.
19. Further, whilst having found the Appellant not to be credible the judge clearly did not consider it was necessary to engage with the issues of sufficiency of protection or internal relocation, he does not, in fact, state that in his decision. Given that these were issues that were clearly raised in the Appellant's claim, in the refusal letter and in the skeleton argument before him, I consider it was incumbent upon him to at least address those points. All the judge said at [39] was:

"The Appellant states that her family will be able to find her anywhere in Albania as it is a small country and her brother is a taxi driver. As I do not accept the Appellant's claim that she is in fear of her family or her ex-fiancé, I do not accept that she cannot live in Albania".

I find that this does not deal with the issue of internal relocation properly or at all.
20. Lastly, there was no consideration by the judge of paragraph 276ADE(vi) of the Rules. It is necessary in light of the jurisprudence from the higher courts to consider any Article 8 claim through the prism of the Immigration Rules. That the judge has failed to do, despite submissions being expressly made both orally and in the skeleton argument as to whether there would be very significant obstacles to integration both by the Appellant and her two illegitimate children. In that respect there is no finding by the judge as to the legal status of the children. The Appellant's consistent claim is that they are illegitimate. The judge notes that submission at [30] but makes no finding upon it.
21. I further find that the judge's findings as to the Appellant's relationship with her former partner N at [37] are unclear and unsustainable. There is no evidential basis to find that the Appellant remains with her former partner and father of her children. The fact that he attended the registrar to register the birth of the children is not, I

find, sufficient reason to find that they remain in a relationship, absent any other evidential foundation for such a finding.

Decision

22. In light of the above findings and reasons, I find material errors of law in the decision of First-tier Tribunal Judge M A Khan. I set that decision aside and remit the appeal for a hearing *de novo*. Whilst the appeal was previously heard in Harmondsworth, the Appellant is living in E11, thus it would be more appropriate for the appeal to be heard in Taylor House.

Directions

- (1) The appeal should be listed for two and a half hours.
- (2) An Albanian interpreter will be required.
- (3) The file should be transferred from the Hatton Cross Hearing Centre to Taylor House.
- (4) Listing should please liaise with the clerk to Mr Hawkin on 02074528900.

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 *Rebecca Chapman*

Date 30 January 2019

Deputy Upper Tribunal Judge Chapman