



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

Appeal Number: PA/03003/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 24 February 2020**

**Decision & Reasons Promulgated
On 17 March 2020**

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ER

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms J Isherwood, Senior Home Office Presenting Officer

For the Respondent: Ms N Ahmad, Counsel, instructed by Malik & Malik
Solicitors

DECISION AND REASONS

This is an appeal of the Secretary of State. For ease of reference, where appropriate I will describe the parties as they were before the First-tier Tribunal. The Secretary of State appeals against a decision of First-tier Tribunal Judge O'Malley promulgated on 10 September 2019. Judge O'Malley allowed an appeal by the appellant against a decision of the Secretary of State dated 15 March 2019 to refuse her claim for asylum and humanitarian protection, made on the basis that she was a trafficked woman from Albania who faced a risk of re-trafficking.

Factual background

The appellant was born in Albania in 1991. She entered the United Kingdom clandestinely in October 2015 with a man, M, who was later accepted by the Competent Authority to have trafficked her here. The appellant had been trafficked through a number of locations in Central and Southern Albania and later throughout Europe with M.

The appellant met M after she separated from her partner. The relationship broke down upon her becoming pregnant. M promised the appellant love and support but would later abuse, exploit and traffick her. The appellant was vulnerable because her pregnancy was out of wedlock. She had already been ostracised by her family and ejected from the family home. The family are located in Central Albania.

In a decision dated 21 November 2018, the Competent Authority accepted the appellant's claims to have been trafficked. That is a feature of this case which performs an important function in the overall analysis of the judge below.

The decision below

Turning to the decision of the First-tier Tribunal, there were some aspects of the appellant's subjective fears which the judge did not find to be well-founded. The appellant's case before the First-tier Tribunal had been that she faced a risk of re-trafficking from criminal gangs. The judge gave reasons, which have not been challenged by the appellant, for rejecting her claimed fear of criminal gangs, concluding at [44] that she had not been trafficked by a gang. Essentially, the judge found that there was no link between M and the wider criminal fraternity such that the appellant's fear was of the latter, and not just the former. Crucially, and correctly under the circumstances, the judge did not purport to go behind the decision of the Competent Authority, and based her analysis of the appellant's asylum claim on the basis that she was a victim of trafficking at the hands of M. The judge then considered whether it would be possible for the appellant to be returned to Albania without facing a risk of re-trafficking.

At [48] the judge outlined some of the factors which militated in favour of the appellant being returned to Albania. The judge noted that the appellant was an intelligent and able woman who had initially embarked upon degree level study, but which had to be stopped due to financial difficulties. She had been able to obtain interpreter qualifications despite suffering from some mental health problems and despite caring for her young son, born as a result the pregnancy outlined above. However, the judge noted in the same paragraph that the appellant's family would no longer be supportive of her and that there would be "some risk from them if she were to relocate close to" them.

The judge at [50] considered that the appellant would be able to rely on some mental health provision upon her return to Albania, if that would be necessary. However, at [51] the judge said that:

“I am not satisfied that the police would be a source of support for gangs seeking to re-traffick the appellant, both because my finding is that she was not initially trafficked by a gang and because I find that the evidence in the COI [presumably this is a reference to the Home Office *Country Policy and Information Report*] and the country guidance is that there are areas of positive support from the police to tackle the problems of trafficking in Albania.”

Having set out those factors militating in favour of a finding that the appellant would enjoy sufficiency of protection from the authorities, the judge then noted at [52] that her “current position overall” was that her illegitimate child, the lack of support from her family and the impossibility of finding refuge support “in the North of Albania, the only part of the country where she would feel sufficiently safe to return” meant that it would not be possible for the appellant to be returned to Albania without facing a significant or a real risk of future persecution or trafficking.

Permission to appeal

Permission to appeal was granted by First-tier Tribunal Judge Povey on the basis that it was arguable that the judge had failed properly to understand the position of the Secretary of State in relation to the location in Albania to which the appellant would be returned. The grounds contend that the judge approached the issue of return to Albania on the basis that the only possible location of return would be Northern Albania and approached the issue of risk on return on that basis. That was an error, the grounds contend. Paragraph [48] of the refusal letter dated 15 March 2019 stated that the appellant could relocate to other parts of Albania “including Northern Albania” and therefore the return of the appellant potentially included, but was not limited to, Northern Albania. The judge had erroneously approached the issue of the appellant’s return on the basis that only Northern Albania was a prospective location of return, the grounds contend. The grounds also contend that the judge’s findings concerning the overall assessment must be conducted pursuant to TD and AD (Trafficked women) CG [2016] UKUT 00092 (IAC) did not permit the finding that the judge was eventually to reach that the appellant would not be able to relocate without facing a real risk of being trafficked.

Discussion

Ms Isherwood helpfully crystallised the Secretary of State’s position to the following proposition. While maintaining her position that the judge had erroneously approach the issue of the appellant’s return as though it were *only* to Northern Albania at various points throughout the decision, she accepted that at [52] the judge had said that Northern Albania was the only location in Albania that the appellant would feel comfortable returning to. Ms Isherwood submitted, there was no evidence before the judge which permitted her to reach the finding that the Northern Albania was the only part of the country that the appellant would feel sufficiently safe to return to, and highlights that there is no discussion in the judge’s decision of any evidence which highlighted Northern Albania as the only area in Albania where the appellant would be willing to return to. She noted that the appellant’s witness statement focussed

on her claimed inability to return to the entirety of Albania, without singling out the North as a potential area of less reluctance on her part.

The significance of the judge's finding that the appellant would only feel "sufficiently safe" in Northern Albania lies in the fact that there are no shelters or refuges there for returned victims of trafficking with illegitimate children, such as those in the position of this appellant. The judge's findings - consistent with TD and AD - were that such support would be vital for internal relocation within Albania not to be unduly harsh.

Viewed in this way, the Secretary of State's primary ground of appeal, namely that the judge mistakenly analysed the appellant's prospective return on the basis that *only* Northern Albania would be a viable internal relocation destination, falls away. While at [7] the judge summarised the Secretary of State's case in that way, her operative reasoning at [52] was based on the premise that the reason Northern Albania was in scope was because it was the only part of the country where the appellant would feel she was safe, not because that was the Secretary of State's sole proposed point of return, or target relocation area. The judge's reasoning was not based on a mistake of fact of the sort falling within R (Iran) v Secretary of State for the Home Department [2005] EWCA Civ 982 at [9].

Properly understood, the reformulated challenge of the Secretary of State is a sufficiency of reasons challenge, rather than one brought on the basis of a factual mistake made by the judge. I accept that there is some superficial force in Ms Isherwood's reformulated submission that the judge did not set out in terms why the appellant would only be comfortable in returning to Northern Albania. However, those submissions, as clearly and helpfully as they were made before me, were only superficially attractive, for the following reasons.

Ms Ahmad for the appellant submitted that the appellant's family were located in Central Albania and that many of the locations with which she was compelled to accompany M upon during the process of her being trafficked out of the country were also in Central and Southern Albania. Looking at the facts of the case as a whole, submits Ms Ahmad, it is clear that the only part of Albania which did not feature in the accepted trafficking narrative advanced by the appellant was Northern Albania. Therefore, submitted Ms Ahmad, it was possible to "infer" that the judge was referring to the overall circumstances of the appellant's case by reference to the evidence that she had heard.

It is trite law that a judge does not need to repeat back to the parties in a case all the evidence that has been given. It is also trite law that a judge must give reasons which are sufficient to explain the findings reached by a court or Tribunal when considered and read by the parties in the case, who will be familiar with the evidence and the submissions that were made. This judge was plainly aware of the contents of the appellant's asylum interview, which outlined the different areas within Albania where she outlined her fear of return, for example see question 47. Accordingly, the judge had before her evidence which was consistent with the finding that she outlined in [52]

concerning the only area of Albania where the appellant would be sufficiently out of reach of her former trafficker and family was the North of Albania.

In English v Emery Reimbold and Strick Ltd (Practice Note) [2002] EWCA Civ 605 Lord Phillips MR, as he then was, discussed at some length the duty to give reasons. At [118] he said this:

“It is the duty of the judge to produce a judgment that gives a clear explanation for his or her order... An unsuccessful party should not seek to upset a judgment on the ground of inadequacy of reasons unless, despite the advantage of considering the judgment with the knowledge of the evidence given and submissions made at the trial, that party is unable to understand why it is that the judge has reached an adverse decision.”

I consider that the judge in the present matter was in the same territory. The judge had before her an account from the appellant which described parts of Albania within which she had experienced trafficking and in relation to which she claimed to experience or be at risk of future re-trafficking, or at risk from her family. In light of those factors, and having considered the individual circumstances of the appellant, the judge was entitled to highlight that Northern Albania was a part of the country in relation to which the appellant would be less afraid to return to.

There had been no challenge on the part of the Secretary of State to the judge’s application of the background materials concerning the absence of women’s refuges in the North of Albania.

The Secretary of State did, however, seek to challenge the individual assessments that the judge performed of the appellant’s overall case. Pursuant to TD and AD it is necessary for a judge to consider the risk of re-trafficking pursuant to certain criteria. At [(g)] of the headnote, this Tribunal stated as follows:

“Re-trafficking is a reality. Whether that risk exists for an individual claimant will turn in part on the factors that led to the initial trafficking, and on her personal circumstances, including her background, age, and her willingness and ability to seek help from the authorities. For a proportion of victims of trafficking, their situations may mean that they are especially vulnerable to re-trafficking, or being forced into other exploitative situations.”

Ms Isherwood contends that the judge’s application of those criteria was flawed. She accepts that the judge considered that the mental health conditions experienced by the appellant, her illegitimate child and the lack of support for her family were all legitimate factors for the judge to take into account. However, she contends that there were additional factors which militated in favour of the appeal being dismissed which the judge failed to take into account. Those were the fact that the appellant is familiar with the language, culture and customs of Albania and spent the majority of her life there. Those considerations, submits Ms Isherwood, combine to lead to the

inescapable conclusion that the appellant's overall circumstances were such that there would be no risk on her return.

I disagree. The judge was entitled to set out the factors that she did at [52] and [53]. The factors militating in favour of the appellant's removal, namely the familiarity that she can be expected to have with the language, culture and customs of Albania, are factors which do not lead to the only conclusion that was properly available to the judge being one of dismissing the appeal. In fact, those are relatively minor considerations which can be expected to be present in almost every case of an Albanian victim of trafficking facing a prospective return to Albania. Taken at its highest, that submission on the part of the Secretary of State is no more than a disagreement of fact with a legitimate and well-reasoned conclusion set out by the judge.

In conclusion, therefore, I accept that the judge did appear to err in summarising the respondent's position at several points in the decision as being that the appellant would be returned only to Northern Albania. However, that was not an error which was in any way material to the overall conclusion which the judge reached. That was a conclusion reached by the judge in light of the appellant's evidence and a careful examination of the nature of her protection claim by reference to the geographical pattern of the previous abuse that she had experienced and suffered and the likely future risk of persecution were she to be returned in light of those considerations. For these reasons I dismiss this appeal.

Notice of Decision

The decision of Judge O'Malley did not involve the making of an error of law.

This appeal is dismissed.

I maintain Judge O'Malley's order for anonymity.

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 *Stephen H Smith*

Date 25 February 2020

Upper Tribunal Judge Stephen Smith