



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: PA/03999/2019  
PA/06691/2019

**THE IMMIGRATION ACTS**

At: Civil Justice Centre (remote hearing)  
Heard on: 24<sup>th</sup> August 2020

Decision & Reasons Promulgated  
On 9<sup>th</sup> September 2020

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

HT

AT

(anonymity direction made)

Appellants

and

Secretary of State for the Home Department

Respondent

For the Appellant: Mr Lee, Counsel instructed by Tuckers Solicitors  
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellants are both nationals of Albania who seek protection in the United Kingdom. They are a married couple and their appeals have been linked for that reason.
2. The First Appellant (HT) has been recognised as a victim of trafficking, but has been refused protection on the grounds that she does not face a real risk of being trafficked or otherwise facing serious harm in Albania. The Respondent

further asserts that she could, if necessary, avail herself of the protection of the Albanian authorities and/or relocate within Albania without facing any undue hardship.

3. The Second Appellant (AT) asserts that he has a well-founded fear of persecution in Albania as a member of a particular social group, viz a family involved in a blood feud. It is claimed that he and HT married against the wishes of their respective parents and that it later emerged that unbeknownst to the Appellants there was in fact a long-standing blood feud between the two families. He further asserts a fear of harm from the criminals who trafficked his wife. The Respondent has rejected his claim for a want of credibility. The Respondent wants to deport AT because he is a foreign criminal.
4. If either appellant succeeded in gaining protection, the other relied upon Article 8 to submit that it would be disproportionate to refuse to grant leave in line. Before me it was accepted that the two matters must be considered in tandem.
5. These were the matters in issue before the First-tier Tribunal. In a lengthy and very detailed decision the Tribunal (Judge Malcolm) found as follows:
  - (i) That HT is a victim of trafficking. The 'trafficking incident' took place in 2010. HT states that she was abducted from the street in Tirana and taken to a place where she was held captive and raped. She understood that the intention was to traffick her for sex work in western Europe. She managed to escape and returned to her family.
  - (ii) The Appellants left Albania following that incident and unsuccessfully claimed asylum in Belgium after which they returned to Albania, remaining there between 2012-2015.
  - (iii) It is "difficult to accept" that HT remained indoors at her parents home for those three years.
  - (iv) It is also difficult to accept that she was in those three years having a lot of problems with her own parents, and facing threats from AT's parents.
  - (v) HT's stated fear of being re-trafficked does not sit easily with her decision to return to Albania in 2011 (albeit that she states that this was against her wishes and was the decision of her husband).
  - (vi) The evidence fell short of establishing that there was a blood feud between the Appellants' respective families. Although it was clear that relations were not good, both families had at various times given the Appellants support following their

marriage, which was inconsistent with the claimed fear now stated.

- (vii) The couple and their children could return to Albania and live together, away from their families if they wished. HT would receive appropriate medical treatment.

6. Both appeals were thereby dismissed.
7. Permission sought was granted on all grounds by First-tier Tribunal Shimmin on the 18<sup>th</sup> February 2020. The appeal was heard remotely (via Skype) with the consent of the parties whose representatives both made oral submissions: this was necessary because of the measures in place to combat the spread of Covid-19.

### **The Challenge**

8. The grounds are that the Tribunal erred in:
  - a) Its approach to credibility. In particular the Tribunal made unclear findings and rejected admissible evidence on the basis that it was hearsay;
  - b) Making no finding on the relevance of HT's trafficking experience. It was directly relevant to her Article 8 and protection claims yet the decision makes no finding on it;
  - c) Failing to engage with the expert evidence in respect of HT's mental health in the context of return of a victim of trafficking.
9. The appeal was opposed on all grounds by the Respondent who submitted that any imprecision in the language used by the Tribunal was immaterial because the findings were clear and properly based on the evidence. Mr McVeety accepted that what had happened to HT was utterly appalling but that the risk of any such harm re-occurring had simply not been made out: indeed she had returned to Albania very shortly after those events and had remained in her family home, the most obvious 'hiding place' imaginable. It was not disproportionate to expect her to integrate again. In respect of the expert the Tribunal did consider the report but was not obliged to accept her conclusions.

### **Ground 1: Credibility**

10. The standard of proof in protection appeals is lower than the civil standard. It can be expressed as a "reasonable likelihood" or as a "real risk". This lower standard is applied because of the difficulties that asylum seekers face in

proving their cases, and because of the grave consequences should decision makers get it wrong. It is an established principle of asylum law that in applying that standard decision makers should be slow to reject evidence on the basis that the claimed actions of an individual were inherently incredible. In Y v Secretary of State for the Home Department [2006] EWCA Civ 1223 Lord Justice Keene put it like this:

25. There seems to me to be very little dispute between the parties as to the legal principles applicable to the approach which an adjudicator, now known as an immigration judge, should adopt towards issues of credibility. The fundamental one is that he should be cautious before finding an account to be inherently incredible, because there is a considerable risk that he will be over influenced by his own views on what is or is not plausible, and those views will have inevitably been influenced by his own background in this country and by the customs and ways of our own society. It is therefore important that he should seek to view an appellant's account of events, as Mr Singh rightly argues, in the context of conditions in the country from which the appellant comes. The dangers were well described in an article by Sir Thomas Bingham, as he then was, in 1985 in a passage quoted by the IAT in Kasolo v SSHD 13190, the passage being taken from an article in *Current Legal Problems*. Sir Thomas Bingham said this:

*'An English judge may have, or think that he has, a shrewd idea of how a Lloyds Broker or a Bristol wholesaler, or a Norfolk farmer, might react in some situation which is canvassed in the course of a case but he may, and I think should, feel very much more uncertain about the reactions of a Nigerian merchant, or an Indian ships' engineer, or a Yugoslav banker. Or even, to take a more homely example, a Sikh shopkeeper trading in Bradford. No judge worth his salt could possibl[y] assume that men of different nationalities, educations, trades, experience, creeds and temperaments would act as he might think he would have done or even - which may be quite different - in accordance with his concept of what a reasonable man would have done.'*

11. It is also trite that in this jurisdiction we find strange and terrible things do happen to people; something may be difficult to believe but it is nevertheless capable, upon application of the lower standard, of being accepted as true: HK v Secretary of State for the Home Department [2006] EWCA Civ 1037.
12. In this case the evidence was shocking. HT, then a young woman, was literally grabbed off the street and forced into a terrifying situation of sexual slavery. Having failed to secure protection abroad she was compelled to return to the country where that appalling event befell her and live in hiding. Having little choice, she claims that she hid in the home of her parents, notwithstanding that her father had effectively disowned her because she had become pregnant as a

result of her rape and had had an abortion. That evidence was shocking, but in the context of Albania, there was nothing inherently incredible about it. We know that the trafficking of women for the purpose of sexual exploitation remains a serious problem in that country; we know that certain elements of Albanian society continue to operate under strict patriarchal norms where the 'honour' of the family is closely connected to the chastity and behaviour of its women: TD and AD (Trafficked women) CG [2016] UKUT 00092 (IAC). We also know that "self-confinement" in the home is an established practice in Albania for those seeking to avoid harm from outside actors: EH (blood feuds) Albania CG [2012] UKUT 00348 (IAC).

13. It is against that background that Mr Lee rightly submits that the central credibility findings of the First-tier Tribunal in this case cannot stand. At §215 the decision states:

"Whilst the appellant has given evidence that between 2012 and 2015 when she returned to Albania she basically remained indoors I found this somewhat difficult to accept".

No explanation is given as to why that might be difficult to accept. Nor is it apparent from the face of the decision that the Tribunal sought to place the Appellant's claims about her actions in the context of the country background evidence, or the country guidance decisions referred to above. In his submissions Mr McVeety suggested that it was difficult to accept that the Appellant might choose to hide at her parents' house because she had fallen out with them, and because it was the most obvious hiding place imaginable. As Mr Lee put it, those might have been good reasons had the Tribunal articulated them. As it is, I am unable to say why the Tribunal was unable to accept the evidence on this matter.

14. At §216 the same phrase is used again:

"Whilst accepting that the appellant was trafficked as set out above it is somewhat difficult to accept that the appellant was still in fear of a further incident of this nature given that she had voluntarily returned to Albania with her husband following the refusal of the asylum claim in Belgium (albeit I have noted that the first appellant has advised that she did not wish to return to Albania)".

I am at a loss to understand why it might be "somewhat difficult to accept" that a woman who had been kidnapped and raped would have a subjective fear of the same thing happening again. No explanation is given as to why the Tribunal was here apparently rejecting the detailed evidence of the Appellant about how she had no wish to return to Albania but was given no choice.

15. The phrase is used a third time at §218:

“I find it difficult to accept that for three years the appellant was living with her parents that she was living in a situation where she had the level of discord with her parents as claimed by her and was being subjected to threats from her husband’s family”

Again it is not explained why, in the context of Albanian society, that evidence was difficult to believe. Lots of women in Albania live in circumstances which by our standards might appear intolerable.

16. Mr McVeety was prepared to concede that the language used by the Tribunal was unhelpfully ambiguous, but he submitted that overall the findings were clear. I accept that notwithstanding the imprecise language it is clear from the decision that the First-tier Tribunal was rejecting the evidence: what I do not accept is that intelligible reasons were given for that conclusion. I therefore set the credibility findings made aside.
17. I should add for the sake of completeness that there appears to be a *Robinson* obvious error at §222 in that the First-tier Tribunal has failed to appreciate what the matters in issue between the parties actually were. The Tribunal there rejects the claim that there is a blood feud between the two families when, as it notes at its own §16, the Respondent had not placed this matter in issue. The Respondent had accepted that AT has a subjective fear of harm but had rejected his claim for protection on the basis that he could internally relocate and/or seek the protection of the Albanian authorities.

## **Ground 2: Trafficking**

18. It is not in dispute that HT is a victim of trafficking. That was the finding of fact of the Competent Authority, applying the civil standard of a ‘balance of probabilities’. Before the First-tier Tribunal HT relied on that fact to submit that this was relevant to:
  - a) The risk assessment under the Refugee Convention, in particular to whether she could reasonably be expected to internally relocate within Albania: TD & AD (Albania)
  - b) Whether there were very significant obstacles to her integration in Albania: paragraph 276ADE(1) Immigration Rules
  - c) The proportionality of refusing her leave to remain in the United Kingdom today: Article 8 ECHR.
19. Ground 2 consists of the simple complaint that none of those arguments are addressed by the First-tier Tribunal. I agree. The unreasoned finding at §223 that the mental health treatment required by HT would be available to her in Albania does not engage with the arguments about the objective evidence on

that matter, nor with the detailed evidence about HT's particular needs, to which I return below. The same can be said for the finding at §230 that the Appellants have shown a "degree of resilience".

### **Ground 3: Expert Evidence**

20. The Appellants relied on two important sources of evidence which do not feature in the reasoning of the First-tier Tribunal.
21. The first was a detailed expert report by Antonia Young dated the 11<sup>th</sup> October 2019. No issue was taken with Ms Young's expertise. She is a Senior Honorary Research Fellow at the University of Bradford, as an anthropologist who has spent many years specialising in the study of Albanian, and wider Balkan, society. Ms Young's report addressed the plausibility of this claim in the context of her in-depth knowledge about Albania, considered the obstacles that the Appellant's might face in relocating within that country and specifically looked at the evidence about the integration of victims of trafficking post TD & AD. The Tribunal acknowledges that the report was before it in its summary of the submissions made, but nowhere is the information supplied by Ms Young considered or used to contextualise the evidence when it came to the findings. That is an error of law.
22. The second source of evidence was provided by the Snowdrop Project, a charity based in Sheffield which provides long-term, community-based support to survivors of trafficking. HT was referred to the project in 2016 and has been receiving support, including mental health care, there ever since. The authors of the multiple letters from this organisation all therefore know her well. They report that she regularly suffers from "crippling anxiety", "panic", "depression" and "flash backs" and that having to re-narrate her trafficking experience re-traumatizes her. She suffers from sleep deprivation because of nightmares and hallucinations and as a result is often found to be "fatigued, distant, withdrawn and unfocused". It is the view of the Snowdrop Project that the Appellant will only be able to overcome the mental health sequelae of her abduction and rape once she feels stable and safe. None of that evidence is addressed in the decision of the First-tier Tribunal. That is an error of law.

### **Conclusion**

23. The crux of Mr McVeety's submissions were that this appeal should not be allowed because on any evaluation, the Appellants had failed to make out their claims for protection: any errors in approach were therefore immaterial. In the final analysis he may well be right. The Appellants are however entitled to a proper consideration of their linked claims, made upon the application of the correct standard of proof and legal principles, and with clear reasons given for the conclusion reached. That is particularly so where the historical events

underpinning the claims are not in dispute. With this in mind I reluctantly agree that this is a case where the interests of justice require that the appeal must be heard *de novo* in the First-tier Tribunal.

### **Anonymity Order**

24. These appeals concerns claims for protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify the Appellants or any member of their family. This direction applies to, amongst others, both the Appellants and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

### **Decisions**

25. The decision of the First-tier Tribunal is set aside.
26. The appeal is to be heard afresh in the First-tier Tribunal before a judge other than Judge Malcolm.

Upper Tribunal Judge Bruce  
4<sup>th</sup> September 2020