



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

Appeal Number: PA/09671/2019 (V)

THE IMMIGRATION ACTS

Heard at : Field House

On : 18 January 2021

**Decision & Reasons
Promulgated**

On : 3 February 2021

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**SM
(Anonymity Order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Patyna, instructed by Kilby Jones Solicitors
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was skype for business. A face to face

hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

2. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision refusing her asylum and human rights claim.

3. The appellant is a citizen of Albania born on 12 March 1989. She arrived in the UK on 13 November 2016 and claimed asylum shortly after her arrival.

4. The basis of the appellant's claim was that she was a victim of human trafficking and would be at risk on return to Albania as a result. She claimed to have travelled to Italy with her partner, S, on 22 July 2016 after her family disapproved of her proposed marriage to him. She claimed that S left her with his friends in Rome whilst he went to look for work, that he called her to tell her that he had been arrested and that she should do what his friends told her to raise money for his legal fees, and that his friends took her to a house where she was kept under guard and made to work as a prostitute. In October 2016 the police raided the house and helped her and she was sent back to Albania. She went home but was told by her mother that she needed to leave as she had shamed the family and her father may kill her on his return. She then went to stay with a friend and she left Albania in November 2016. She feared her family if she returned to Albania, and also feared being re-trafficked.

5. Prior to the decision in her claim and following a referral through NRM, the appellant was found by the Competent Authority, on 12 August 2019, to be a victim of human trafficking.

6. The appellant's asylum and human rights claim was refused on 26 September 2019. The respondent accepted that she was a victim of trafficking, that she feared her family and feared being re-trafficked and accepted that she had a genuine subjective fear of return to Albania. However, the respondent did not accept that that fear was objectively well-founded because there was a sufficiency of protection and internal relocation alternative available to her.

7. The appellant appealed against the respondent's decision and her appeal was heard in the First-tier Tribunal on 6 November 2019 by Judge Traynor. The judge noted the appellant's evidence, that she had been told by the police on entry into Albania to go somewhere where they would offer her shelter, but that she went home instead as the police told her that the shelter would only be short-term and that many families were prepared to forgive and offer support in cases like hers. The appellant's evidence was, further, that whilst she was staying with her friend after her mother told her to leave, she was told by her mother that two men had visited the family house looking for her and she believed from the description that one was S her former partner and the other was a police officer. She believed that S was part of a large network of organised crime involved in trafficking and she therefore fled Albania to save herself from being re-trafficked.

8. The judge noted that the respondent's refusal decision did not seek to draw adverse inferences as to the appellant's credibility and that the only issue before him was risk on return. However, he did not accept the appellant's account of her former partner coming to look for her at her home and did not accept that there was anyone else involved in her trafficking except for her partner and his two friends in any event and found in the circumstances that she could relocate to another part of the country away from her home area. The judge considered that there was a sufficiency of protection available to the appellant and that she was not at risk of being re-trafficked. He accordingly dismissed the appeal. The judge noted that the appellant was pregnant and recorded her claim that her partner had left her when he found out about her past, but he considered that she could safely return to Albania and that there were no very significant obstacles to her integration in that country.

9. The appellant sought permission to appeal Judge Traynor's decision to the Upper Tribunal on the grounds that he had made material misdirection in law, that he had made irrational findings, that he had failed properly to apply the relevant considerations in TD and AD (Trafficked women) CG [2016] UKUT 92 and that he had made a material error of law in his consideration of Article 8. Permission to appeal was granted by the First-tier Tribunal.

10. The matter came before me. Ms Cunha conceded that the third ground, referring to the application of TD and AD, had been made out and that that was a material error of law requiring the decision to be set aside. However, she asked that the judge's findings of fact otherwise be preserved and that the decision be re-made only on the issues of sufficiency of protection and internal flight. Ms Patyna's submission in response was that it was difficult to separate out the findings of fact from the judge's lack of assessment of relevant considerations under TD and AD, as they were intertwined. Further, with regard to the first two grounds, she submitted that the judge's plausibility findings were made without reference to relevant parts of TD and AD and that adverse credibility findings had been made without proper reason and despite the respondent not having raised credibility concerns. She requested that the matter be remitted for a *de novo* hearing.

11. I find myself in agreement with Ms Patyna, that it would be difficult to separate out the judge's failure properly to apply TD and AD - a matter conceded by Ms Cunha for the respondent - from his findings of fact. That is particularly so because, in conceding that the third ground was made out, the respondent accepts that the judge failed to undertake a holistic assessment of the appellant's circumstances in the light of the background material and country guidance. Furthermore, I agree with Ms Patyna that the judge made findings rejecting aspects of the appellant's account, such as her claim that the traffickers were part of a larger organisation, without providing any reasons for so doing and having previously noted that the respondent did not raise credibility concerns about the appellant's evidence. In the circumstances I do not agree that there are aspects of this decision that can properly be preserved and it seems to me that the matter has to go back to the First-tier Tribunal for a complete rehearing.

12. Accordingly, I set aside Judge Traynor's decision in its entirety, with no findings preserved and remit the case to the First-tier Tribunal to be heard *de novo* before a different judge.

DECISION

13. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law and the decision is set aside. The appeal is remitted to the First-tier Tribunal pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), to be heard afresh before any judge aside from Judge Traynor.

Anonymity

The anonymity direction made by the First-tier Tribunal is maintained.

Signed: S Kebede
2021
Upper Tribunal Judge Kebede

Dated: 19 January